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April 1, 2020

The Honorable Betsy DeVos  
Secretary  
United States Department of Education  
400 Maryland Ave, SW  
Washington, DC 20202

Dear Secretary DeVos:

Thank you for the time given by your staff at a recent meeting of the private school community concerning the equitable participation of private school students, teachers, other educational personnel, and families in the services and benefits of the Education Stabilization Fund (ESF) sections of the CARES Act.

**There are three key elements to this new fund that we request the US Department of Education (USDE) urgently convey to State Educational Agencies (SEAs), Local Educational Agencies (LEAs), and the non-public school community:**

- The ESF is a new emergency education fund, unrelated to the Elementary and Secondary Education Act (ESEA) or the Individuals with Disabilities Education Act (IDEA).
- There are two grants within the fund, and equitable services are required to non-public schools under both grants.
- All non-public schools are eligible to participate in the ESF, no matter their prior participation in ESEA or IDEA and no matter their Title I count.

Following our further study of the Act, we believe that with clear FAQs from USDE, SEAs and LEAs can effectively implement their programs in a way that treats private school students fairly and equitably. If we work together, we believe that these emergency funds can begin to benefit all students quickly.

First, please consider Section 18003(b) and 18003(c), which govern allocations to SEAs and LEAs under the Elementary and Secondary Education Relief Fund. Section 18003(b) allocates funds to the states in the same proportion as each state received under Part A of Title I in the most recent fiscal year. Likewise, Section 18003(c) allocates 90 percent of the amount of a State's allocation to LEAs in the same proportion as each LEA received under Part A of Title I in the most recent fiscal year. Since the funding is based on an already conducted Title I count, there is no

reason to ask private schools to ascertain any count of private school students for the purpose of Section 18003 funding.

Section 18005(a) requires LEAs receiving funds under Section 18003 to provide equitable services in the same manner as provided under Section 1117 of ESEA, as determined in consultation with representatives of non-public school students. Our interpretation of this section is that Section 1117 of ESEA refers to the manner in which services are provided (i.e. equitably) and does not refer to the allocation or eligible uses of the funds, since the only reference to the allocation is in Sections 18003(b) and 18003(c). We believe this provides a clear path for FAQs from USDE that will greatly assist SEAs and LEAs in their implementation. As we mentioned to USDE staff in our recent meeting, having clear direction from USDE from the very beginning will best assure that implementation proceeds swiftly, without public and private school representatives having to negotiate over the amount of funding available for assistance to private schools.

**As such, we respectfully submit the following suggestions for FAQs:**

1. How do LEAs determine the proportional share of funds that should be reserved to provide equitable services to private school students through Education Stabilization Fund grants?

*The proportional share of funds allocated to provide equitable services to private school students is the same as the count of private school students who attend non-profit private schools located within the LEA compared to all public and private school students attending schools located within the LEA.*

2. What are the requirements for timely and meaningful consultation to ensure the equitable participation of private school students?

*LEAs are required to conduct timely and meaningful consultation in accordance with Section 1117 of ESEA prior to applying to the SEA and again prior to making any decisions that affect the ability of private school students to participate equitably in the benefits of Section 18003.*

3. Are LEAs required to obtain an Intent to Participate Form from private school officials prior to entering into timely and meaningful consultation?

*No, LEA officials should invite ALL private school representatives whose schools are located within their boundaries to participate in the benefits of Section 18003 and should not delay the consultation process by sending out Intent to Participate forms.*

4. What services and benefits under Section 18003 are available to private school students?

*The services and benefits available to private school students and staff are the same as those available to public schools, except that the control of any services or assistance provided to a private school, and title to materials, equipment, and property purchased with program funds, must be in a public agency and a public agency must administer those funds,*

*materials, equipment, and property. A public entity must provide those services, either directly or through a contract with a public or private entity.*

*All services permitted under Section 18003(d) must be available to best meet the needs of private school students, teachers, and families, as determined through timely and meaningful consultation, regardless of the specific uses determined by the LEA to meet their own students' particular needs. Allowable services under Section 18003(d) are as follows:*

- (1) Any activity authorized by the ESEA of 1965, including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) ("IDEA"), the Adult Education and Family Literacy Act (20 U.S.C. 1400 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) ("the Perkins Act"), or subtitle B of title VII of the McKinney Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).*
- (2) Coordination of preparedness and response efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.*
- (3) Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.*
- (4) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.*
- (5) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.*
- (6) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.*
- (7) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.*
- (8) Planning for and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for on-line learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et 10 seq.) and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.*
- (9) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.*
- (10) Providing mental health services and supports.*
- (11) Planning and implementing activities related to summer learning and supplemental after-school programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.*
- (12) Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.*

**5. How should the non-public schools' proportionate share of the Governor's Emergency Education Relief Fund (Section 18002) grants to LEAs be determined?**

*The Governor should allocate the appropriate portion of the fund to the LEA with instructions to offer equitable services to non-public students based on a per pupil count of the non-public students that attend non-public schools in the boundary of the LEA.*

6. How should the LEA approach the use of current year ESEA and IDEA funds under programs that require equitable participation in light of schools remaining closed due to COVID-19?

*Section 18006 provides for LEA employees and contractors to continue to be paid with Federal funds. This provision can help provide continued Federal education services to private school students while schools are closed due to COVID-19, including providing distance learning and adding a summer school component to instruction to ensure support for students, teachers, and families, and to ensure continuity of instruction when school resumes.*

*Education Stabilization Fund grants can also support these efforts with additional funds that may be needed for ensuring learning and academic support for students. Unobligated funds can be carried over for providing equitable services in the next fiscal year, provided they are obligated by September 30, 2022.*

7. What can districts do to expedite the purchase of materials and the provision of services through contracts to ensure that emergency services and benefits are quickly available to serve students, teachers, and families?

*Under the Education Stabilization Fund, states and localities should expedite the expenditure of funds to the greatest extent allowable under local, State, and Federal procurement and contracting requirements. Fast tracking local and State procedures, using emergency authorizations and other methods, is appropriate to ensure that benefits for students are realized in the most expedited manner.*

8. If, because of school district shutdowns or other shortages related to COVID-19, no appropriate LEA officials are available for consultation with private school officials and for provision of equitable services to private school students, can the SEA conduct timely and meaningful consultation on behalf of the LEA?

*Yes, under an exceptional situation when appropriate LEA personnel are not available, the ombudsman must assume the responsibilities for timely and meaningful consultation and the provision of equitable services, either providing the consultation and services directly or through contract.*

Thank you for your consideration of these recommendations.

Sincerely,



Michael Schuttloffel  
Executive Director