

Congress of the United States

Washington, D.C. 20515

July 31, 2020

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

Dear Secretary DeVos:

We write in opposition to the U.S. Department of Education’s (the Department) interim final rule interpreting the equitable services provision of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act required local educational agencies (LEAs) to provide equitable services “in the same manner” as section 1117 of the ESEA of 1965. But the Department has distorted the plain language of this section to potentially divert more than a billion dollars in federal emergency aid from public-school students to private school students in excess of what the law requires.

The Department first released its unlawful interpretation on April 30 in guidance. But after multiple states objected to the guidance, the Department codified its unlawful interpretation and improperly imbued it with the immediate force of law. While this rule claims to provide flexibility by offering local educational agencies (LEAs) a second compliance option, the second option drastically limits what public schools LEAs can allocate funds to by excluding non-Title I participating schools.¹ Therefore, the Department forces LEAs to make a terrible choice, they either give up their share of an estimated \$1.35 billion² in emergency grant aid or retain those funds, but cut off many of their public schools, teachers, and students in those schools from the aid.

¹ Based on data available from the Elementary/Secondary Information System maintained by NCES, for the 2017-18 school year 11,434 schools were eligible for either Title I targeted assistance or Title I schoolwide programs but did not participate in those programs. See, Dep’t of Educ. National Center for Education Statistics, *Elementary/Secondary Information System*.

² Michael Griffith, *COVID-19 and School Funding: What to Expect and What You Can Do*, Learning Policy Institute (Apr. 22, 2020).

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The Department has repeatedly insisted that stakeholders from both political parties³ and a wide range of constituencies⁴ all misunderstand the law, while only the Department sees it clearly. However, the Department's actions caused considerable confusion for states and LEAs and slowed down their emergency response efforts. As of July 9, just four percent of \$16.1 billion in CARES Act funding that can be used for K-12 education has been spent, even though such funding only covers a portion of unanticipated costs and lost revenues associated with the pandemic.⁵ It is time the Department recognize it has made a mistake and move forward appropriately. Accordingly, we request you immediately rescind this rule and all associated guidance, allowing states to comply with the CARES Act as Congress wrote it.

The plain language of the CARES Act directs LEAs to reserve funds for equitable services in direct proportion to the number of low-income students in private schools.

According to the Congressional Research Service's (CRS) recent legal analysis (CRS memo), "a straightforward reading of section 18005(a) based on its text and context suggests that the CARES Act requires LEAs to follow section 1117's method for determining the proportional share, and thus to allocate funding for services for private school students and teachers based on the number of low-income children attending private schools."⁶ Specifically, section 18005 of the CARES Act requires LEAs to provide equitable services "in the same manner as provided under section 1117 of [Title I-A of the Elementary and Secondary Education Act (ESEA)] of 1965."⁷ Title I, Part A, provides federal funds for schools as determined by a variety of factors, primarily the number and concentration of low-income students within the LEA. Section 1117 requires LEAs to **allocate** a portion of their Title I-A funds to serve students attending private schools. This portion is based on the number of low-income students attending private schools who reside in the Title I school attendance area.⁸ LEAs then must **use** these funds to provide services for low-achieving students, or students at risk of becoming low-achieving, at private schools. Simply put, section 1117 distinguishes the students counted for **allocation** purposes (low-income students) from the students on which LEAs may **use** funds to provide equitable services (low-achieving students).

³ See, e.g., Jennifer McCormick (@suptdrmcormick) Twitter (May 12, 2020, 6:29 PM), <https://twitter.com/suptdrmcormick/status/1260336349032431618>; see also Nicole Gaudiano, *Alexander, DeVos split on stimulus support for private school kids*, Politico (May 22, 2020) ("My sense was that the money should have been distributed in the same way we distribute Title I money... I think that's what most of Congress was expecting."), and Letter from Chairman Robert C. "Bobby" Scott et al to The Honorable Elisabeth "Betsy" DeVos (May 20, 2020).

⁴ See, e.g., The School Superintendents Association et al, Letter to Secretary DeVos (May 5, 2020); see also The Council of Chief State School Officers, Letter to Secretary DeVos (May 5, 2020).

⁵ Elizabeth Chuck, *Schools want to reopen safely. Without federal funds, many worry they can't*, NBC News (July 3, 2020).

⁶ Enclosure 1, Congressional Research Service Legal Memo. "Analysis of the CARES Act's Equitable Services Provision." July 1, 2020. P. 2.

⁷ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 18005 (2020).

⁸ The Elementary and Secondary Education Act of 1965, as amended, § 1117(a)(4)(A)(i), 20 U.S.C. § 6320(a)(4)(A)(i).

The CARES Act provides resources to LEAs through two funds, the Governor’s Emergency Education Relief (GEER) fund and the Elementary and Secondary School Emergency Relief (ESSER) fund. Governors may choose to grant any amount of their state’s GEER fund allocation to LEAs most impacted by COVID-19.⁹ And the ESSER fund allocates aid to LEAs “in proportion to the amount of funds [LEAs] received under part A of Title I of the ESEA of 1965 in the most recent fiscal year.”¹⁰ LEAs have substantial flexibility in using these funds, but the CARES Act requires any LEA receiving these funds to provide “equitable services in the same manner as section 1117.”¹¹ Because the allocation calculation described above is a statutory component of section 1117,¹² this mandates LEAs reserve the same proportion of CARES Act funds for equitable services under the CARES Act as LEAs reserve under Title I-A. Stated differently, LEAs must calculate their equitable services reservation as described above, by counting the number of low-income students enrolled in private schools.

The Department’s Interim Final Rule claims ambiguity where none exists and develops two alternative interpretations of the CARES Act, neither of which is in accordance with the law.

The Department claims that the text requiring LEAs to “provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965” is ambiguous. Its core argument for ambiguity is that the words “in the same manner” require deviation from some of the mechanisms of section 1117 and “if [Congress] simply intended to incorporate section 1117 of the ESEA of 1965 by reference in the CARES Act... [t]he unqualified phrase “as provided in” alone would have been sufficient.”¹³ It concludes that because Congress did not use the magic words “as provided in,” the Department may cast off the calculation formula in section 1117 and develop its own.

The CRS memo references the 2012 Supreme Court decision in *National Federation of Independent Businesses (NFIB) v. Sebelius*¹⁴ to evaluate the Department’s analysis. In *NFIB*, the Court determined that the penalty for noncompliance with the Affordable Care Act’s individual mandate must be assessed and collected *in the same manner* as taxes.¹⁵ The Court held that “when the phrase ‘in the same manner’ references a specific provision in the law, that specific reference supplies the methods or procedures for the agency to follow.”¹⁶ Under *NFIB*, Congress’s use of the phrase “in the same manner” in the CARES Act requires LEAs to provide

⁹ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 18002(b)(1) (2020).

¹⁰ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 18002(c) (2020).

¹¹ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 18005 (2020).

¹² The Elementary and Secondary Education Act of 1965, as amended, § 1117(a)(4)(A)(i), 20 U.S.C. § 6320(a)(4)(A)(i).

¹³ CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools, 85 Fed. Reg. 39,479, 39,481 (July 1, 2020).

¹⁴ *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 545 (2012)

¹⁵ Enclosure 1, Congressional Research Service Legal Memo: “*Analysis of the CARE’S Acts Equitable Services Provision*”. July 1, 2020. P. 10

¹⁶ Enclosure 1, Congressional Research Service Legal Memo. “*Analysis of the CARES Act’s Equitable Services Provision*.” July 1, 2020. P. 11

equitable services using the “methods or procedures” required under section 1117 to implement the equitable services provision. This includes the section 1117 funding allocation provision.

When Congress directed equitable services to be provided “in the same manner as section 1117” it simply meant LEAs should follow standard practices outlined in section 1117 when reserving and using funds for equitable services. Instead, the Department has opted to promulgate a rule that distributes funds in a different manner.

In its interim final rule, the Department provides LEAs with two options for compliance. Option one directs LEAs to allocate a proportion of funds for equitable services equal to the proportion of all private school students within the LEA’s geographic area compared with all students residing in the district, as opposed to the proportion of low-income private school students within the LEA. This calculation greatly benefits private schools, which overall serve about 10 percent of students, but only one percent of low-income students.¹⁷ The Learning Policy Institute estimated this calculation would divert more than \$1.35 billion in emergency relief aid from public school students to serve their private schools peers beyond what would be provided if LEAs relied on the section 1117 formula as required by CARES.¹⁸

Option two allows LEAs to allocate a proportion of funds for equitable services equal to the proportion of low-income private school students within the LEA, but it creates two requirements not incorporated in option one. First, LEAs may serve only students and teachers in public schools participating under Title I, Part A, restricting emergency grant aid from flowing to tens-of-thousands of public schools.¹⁹ Additionally, if a LEA distributes funds using this option, the rule requires the LEAs comply with supplement not supplant regulations, even though the Department has indicated “the ESSER fund does not contain a supplanting prohibition.”²⁰ As explained in more detail below, these restrictions render this option impossible in many districts.

Option one conflates which students the LEAs must count for allocation purposes with which students may be the beneficiaries of equitable services.

As outlined above, in section 1117 of ESEA, Congress has intentionally and consistently based the amount of money allocated to equitable services by an LEA upon its share of students from low-income families, even though the students to be served by that LEA are not limited by income. Further, Congress directed LEAs to apply this same framework to CARES Act funds. Casting these facts aside, the Department’s foundational argument in support of option one is that “if the CARES Act does not limit services based on residence and poverty, then it stands to reason that an LEA should not use residence and poverty to determine the proportional share of available funds for equitable services.” This argument imagines a distinction between the

¹⁷ Michael Griffith, *COVID-19 and School Funding: What to Expect and What You Can Do*, Learning Policy Institute (Apr. 22, 2020).

¹⁸ *Id.*

¹⁹ See *supra* note 1.

²⁰ <https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf>

CARES Act and Title I, where none exists, and draws a conclusion from that imagined distinction, which does not follow.²¹

The Department justifies its deviation from the calculation included in section 1117 by pointing to a non-existent discrepancy between which students the LEAs may serve under Title I as compared to the CARES Act.

The Department's April 30 guidance attempts to distinguish between the CARES Act and Title I equitable services, claiming that "the services that an LEA may provide under the CARES Act programs are clearly available to *all* public school students and teachers, not only low-achieving students and their teachers as under Title I, Part A."²² The Department claimed this distinction necessitated the Department's reinterpretation of section 1117 as applied to CARES Act funds,²³ and its rule repeats a version of this claim.²⁴ But these assertions misrepresent the facts.²⁵ In reality, in most cases Title I-A allows LEAs to provide schoolwide services, not services targeted only at low-achieving students. Schoolwide services, by definition, serve all public-school students in attendance at Title I schools. In fact, according to the Department's own National Center for Education Statistics, 95 percent of all students served in Title I-A participating public schools receive services in schoolwide programs.²⁶ The Department's factual error substantially undermines its argument for reinterpreting the CARES Act. Further, the Department dubiously structures its policy on the misapprehension that funding uses must control funding allocation formulas.

The Department builds its allocation formula in option one on the false premise that the use of funds must guide the allocation of funds.

Having claimed to establish the distinction between the students served by Title I-A and the CARES Act, the Department continues by assuming that funds serving a specific student

²¹ See also Enclosure 1, Congressional Research Service Legal Memo. "Analysis of the CARES Act's Equitable Services Provision." July 1, 2020. P. 12, 16. (The CRS memo indicates that the Department's argument "may elevate a general conception of equity ...over the specific procedures set out in section 1117." And also states that using the "in the same manner" phrase in statute, "Congress, likely meant to indicate *how* LEAs should provide equitable services with relief funds rather than *for what or to whom*.")

²² See U.S. Department of Education, Providing Equitable Services to Students and Teachers in Non-Public Schools Under the CARES Act Programs, page 6 (Apr. 30, 2020).

²³ See *id at 6*. ("This requirement, on its face, necessitates that the Department interpret how the requirements of section 1117 apply to the CARES Act programs, given that an LEA under the CARES Act programs may serve all non-public school students and teachers without regard to family income, residency, or eligibility based on low achievement.")

CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools, 85 Fed. Reg. 39,479, 39,481 (July 1, 2020). ("Eligible public school students must live in a school attendance area selected to participate under Title I and be low achieving.")

²⁵ See also, Enclosure 1, Congressional Research Service Legal Memo. "Analysis of the CARES Act's Equitable Services Provision." July 1, 2020. P. 17 ("[T]he fact that the CARES Act Relief funds may serve a wider swath of students and teachers does not necessarily resolve whether Congress intended to depart from section 1117's express directive to count low-income students as the way (i.e. manner) to determine equitable share.")

²⁶ National Center for Education Statistics, *Study of the Title I, Part A Grant Program Mathematical Formulas* (2019), Executive Summary.

population must be calculated based on the count of those same students. The Department argues that because CARES Act funds serve all students, LEAs must count all students when calculating the proportional share of funds available for CARES Act equitable services.²⁷ This is simply not the case. In fact, both Title I-A and section 1117 of that Title – the policy the Department should be modeling – provide examples of funds that serve a population distinct from the population counted for the allocation of those funds. Title I-A counts low-income students for allocation purposes but provides either schoolwide services for all students in a school or services for low-achieving students in targeted assistance programs within Title I schools. And section 1117 counts low-income students but targets low-achieving students for the provision of equitable services. Neither the broader Title I-A nor section 1117’s equitable services requirements match the students served to the population counted when distributing funds. The Department’s website clarifies this point, stating that “[i]t is important to note that there is no direct link between the formula-eligible children upon whom the distribution of funds is based and the children who receive services from Title I.”²⁸

This was the method Congress intentionally mandated in the CARES Act when it directed LEAs to provide equitable services in the same manner as section 1117. As applied to CARES Act funds, LEAs should reserve a portion of funds in accordance with section 1117 by counting the low-income students served by private schools in the LEA. Importantly, there is a second equitable services requirement in section 8501 of the ESEA that does not follow this method, which Congress could have easily pointed to if it intended the Department’s interpretation.

While section 1117 requires LEAs to provide equitable services using Title I-A funds, section 8501 of the ESEA directs LEAs to provide equitable services to all eligible private school students in various other programs. Where section 1117 mandates LEAs allocate funds for equitable services in proportion to the private school low-income student population within the LEA, section 8501 bases allocations for equitable services in proportion to the private school’s eligible student population within the LEA. Option one from the Department effectively mandates that LEAs provide equitable services in the same manner as section 8501 **not section 1117** of ESEA, in direct violation of the actual requirement provided by Congress in CARES.²⁹

The Department’s rule claims that the most consequential subsections of section 1117, those governing the equitable services allocation, “are inapposite in a CARES Act frame” because of

²⁷ CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools, 85 Fed. Reg. 39,479, 39,481 (July 1, 2020). (“If the CARES Act does not limit services based on residence and poverty, then it stands to reason that an LEA should not use residence and poverty to determine the proportional share of available funds for equitable services to non-public school students.”)

²⁸ National Center for Education Statistics, *Study of the Title I, Part A Grant Program Mathematical Formulas* (2019), Executive Summary.

²⁹See also, Enclosure 1, Congressional Research Service Legal Memo. “*Analysis of the CARES Act’s Equitable Services Provision.*” July 1, 2020. P. 18 (“[T]hat Congress cited section 1117 instead of section 8501 or another ESEA program, tends to support the view that Congress wanted LEAs to use section 1117’s method of determining expenditures for private school’s equitable share of services.”)

this perceived tension between allocation and use.³⁰ But the CRS memo confirms “there is no inherent tension in Congress directing the equitable share of a fund that is, at least in part, income-based to be distributed based on income.”³¹ When Congress directed LEAs to provide CARES Act equitable services in the same manner as provided under 1117, it did not parse the applicable subsections of section 1117. The Department may not do so in absence of Congressional direction.

ED’s interim final rule offers LEAs with an illusory choice by providing a second option that most LEAs, especially low-income LEAs, will be unable to comply with.

The Department’s rule provides LEAs a second option, not originally contemplated in its April guidance. Under option two, LEAs may allocate funds for equitable services in accordance with the requirements of section 1117, but LEAs must abide by two restrictions that render this option untenable and functionally impossible. First, LEAs may only distribute CARES Act funds to Title I participating schools. Second, the Department requires LEAs employing this option to comply with the supplement not supplant requirement in section 1118(b) of ESEA. These requirements are not included in the CARES Act, would deprive tens-of-thousands of public schools from receiving CARES Act aid, and have rendered this option an impossibility for many LEAs.

The Department’s requirement that LEAs only provide CARES Act funds to Title I participating schools will needlessly deprive countless public schools, including many low-income public schools, from aid.

According to data available from the Elementary and Secondary Information System, during the 2017-18 school year, out of 95,752 total public schools, only 59,232 provided Title I services.³² The Department’s second option would therefore cut off more than 35,000 public schools from CARES Act funds. In restricting CARES Act funds to Title I participating schools, the Department’s option two offers LEAs “flexibility” to either spend an improperly inflated portion of their emergency aid on private school students and teachers or deprive many of their public schools of any aid at all.

Further, this will limit funds from flowing to Title I *eligible* schools (low-income public schools) that do not participate in Title I due to insufficient funding. The ESEA allocates Title I-A funds to LEAs based on a variety of factors, primarily the number and concentration of low-income students within the LEA. But these funds are insufficient to fully address need at every Title I-A eligible school, so before LEAs distribute Title I-A funds to schools, they rank and order eligible schools and fund those with the highest need first. The Department’s restriction ignores this reality and will prevent LEAs from distributing funds to more than 10,000 schools serving

³⁰ CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools, 85 Fed. Reg. 39,479, 39,481 (July 1, 2020).

³¹ See Enclosure 1, Congressional Research Service Legal Memo. “*Analysis of the CARES Act’s Equitable Services Provision.*” July 1, 2020. P. 17

³² See supra note 1.

sufficient numbers of low-income students to be eligible for Title I-A, but not receiving Title I dollars.³³

Importantly, whether or not LEAs want to choose this option, many have already taken steps that foreclose this possibility. Specifically, any LEA that has spent “any funds from a CARES Act program on students and teachers in non-Title I public schools” is already ineligible to select option two.³⁴ But option two is likely impossible even for LEAs that have not yet spent CARES Act funds, because many state and local budgets are already set. The COVID-19 crisis has devastated state and local budgets, causing many states and localities to make cuts across all public schools and plan backfills to those cuts with CARES Act aid. Therefore, districts are counting on providing CARES Act funds to serve all public schools in their districts, not only the Title I participating schools. In order to comply with the second option in this rule, states and localities would have to unwind these budgets, and there is insufficient time to do so.

The Department conjures supplement not supplant requirements with no statutory basis.

Option two also subjects LEAs to the supplement not supplant requirement for Title I-A funds. In the Title I-A context, supplement not supplant restricts LEAs from reallocating state and local funds from Title I-A recipients and replacing them with Title I-A aid, preventing the dilution of Title I-A aid. The supplement not supplant requirement serves an important purpose in the Title I-A context, by ensuring the federal investment in Title I-A increases the funds available to serve those schools instead of simply changing their source. Importantly, this requirement has no textual basis in the CARES Act. The Department even acknowledged ESSER “does not contain a supplanting prohibition” in its guidance issued on ESSER.³⁵ The Texas state education agency noted this in guidance to its LEAs on the use of CARES Act funds, stating that “[t]here is not a supplement, not supplant stipulation with this fund.”³⁶ Instead of relying on the text of the CARES Act, the Department simply incorporates this requirement in the rule without any corresponding justification, ensuring that most LEAs will have to “choose” option one, the Department’s original proposal. Further, the Department is inconsistent in its view of supplement not supplant requirements in a CARES Act context. For states that are backfilling state budget cuts with CARES Act aid, such as Texas, the Department has chosen not to intervene, appearing consistent with the Department’s guidance that supplement not supplant requirements do not apply to ESSER. However, the Department takes a conflicting position by creating supplement not supplant requirements for states and LEAs choosing option two in its IFR.

³³See supra note 1.

³⁴ CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools, 85 Fed. Reg. 39,479, 39,480 (July 1, 2020).

³⁵ U.S. Dep’t of Education, Frequently Asked Questions about the Elementary and Secondary School Emergency Relief Fund (ESSER Fund) (May 2020) available at: <https://oese.ed.gov/files/2020/05/ESSER-Fund-Frequently-Asked-Questions.pdf>

³⁶ Texas Education Agency, *CARES Act Funding and COVID Expense Reimbursement FAQ*, p. 11 (2020).

The Department has argued that the national emergency requires that it use the exceptional tool of an interim final rule, but it waited more than three months before it put that rule out.

The Administrative Procedure Act (APA) allows agencies to promulgate rules with the force and effect of law, but agencies must generally abide by several standard requirements, including by providing at least a 30-day comment period and at least 30 days' notice before putting a final published rule into effect.³⁷ However, the APA allows agencies to introduce an "interim final rule" with the immediate effect of law if there is "good cause" and these 30 day periods would be "impracticable, unnecessary, or contrary to the public interest."³⁸ Here the Department claims that it has good cause to bypass both standard APA-mandated 30 day waiting periods. The Department's arguments for good cause are spurious.

While an emergency can serve as good cause, and COVID-19 is certainly an emergency, the facts taken as a whole do not support the Department's justification. Courts have repeatedly held that events outside an agency's control may justify good cause if those events necessitate a rulemaking with immediate effect of law.³⁹ However, those cases are limited to "exceptional circumstances" to prevent an agency from "simply wait[ing] until the eve of a statutory, judicial, or administrative deadline, then rais[ing] up the 'good cause' banner and promulgat[ing] rules without following APA procedures."⁴⁰ In other words, courts have held that "good cause may not arise as a result of the agency's own delay."⁴¹

Here the Department argues that "in light of the current national emergency, its disruption on education in both public and non-public schools, and the immediate need for certainty regarding applicable requirements, the normal rulemaking process would be impracticable and contrary to the public interest because time is of the essence."⁴² However, if it was necessary for the rule to take effect on July 1, the Department could have published this rule a full month after Congress passed the CARES Act, while providing both 30-day periods and meeting its deadline. Instead, the Department waited more than three months to publish the rule and in the interim insisted LEAs either comply with the Department's equitable services guidance or hold the CARES Act funds in escrow.⁴³ Put differently, the Department first prevented LEAs from disregarding its interpretation, then gave its interpretation the effect of law for the month of July, and will only begin considering comments in August. A final rule may be months away. Given the school year generally begins shortly after the comment period closes, the timeline all but ensures that

³⁷ 5 U.S.C. § 553(d)

³⁸ *Id.*

³⁹ See, e.g., *American Federation of Government Emp., AFL-CIO v. Block*, 655 F.2d 1153, 1157 (D.C. Cir. 1981); see also *Nat. Res. Def. Council v. Nat'l Highway Traffic Safety Admin.*, 894 F.3d 95, 114 (2d Cir. 2018), and *United States v. Valverde*, 628 F.3d 1159, 1166 (9th Cir. 2010)

⁴⁰ *Council of Southern Mountains, Inc. v. Donovan*, 653 F.2d 573, 581 (D.C. Cir. 1981).

⁴¹ *NRDC v. Nat'l Highway Traffic Safety Admin.*, 894 F.3d 95, 114-15 (2d Cir. 2018). *Nat'l Educ. Ass'n v. DeVos*, 379 F. Supp. 3d 1001, 1027 (N.D. Cal. 2019)(ruling against the Department because "the time pressures faced by the Department were of its own making").

⁴² CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools, 85 Fed. Reg. 39,479, 39,484 (July 1, 2020).

⁴³ See Letter from The Honorable Elizabeth "Betsy" DeVos to Carissa Moffat Miller (May 22, 2020).

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LEAs must comply with the Department's interpretation and do so before the Department considers their comments.

The Department's rule is both substantively and procedurally improper and will divert precious resources from the nation's public schools that serve 90 percent of all students and 99 percent of low-income students. In the interest of the nations' students, educators, and public schools, we call on the Department to immediately rescind this rule and all related guidance, allowing states and LEAs to implement the law as written.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman
Committee on Education and Labor
U.S. House of Representatives



PATTY MURRAY
Ranking Member
Committee on Health, Education,
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ROSA L. DELAURO
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Cc: The Honorable Virginia Foxx, Ranking Member
The Honorable Tom Cole, Ranking Member
The Honorable Lamar Alexander, Chair
The Honorable Roy Blunt, Chair
