



**Input to the U.S. Department of Education on
the CARES Act Programs; Equitable Services to
Students and Teachers in Non-Public Schools
Interim Final Rule 85 FR 39479
July 22, 2020**

The **Association of Texas Professional Educators (ATPE)** represents approximately 100,000 employees of Texas public schools. As the state's leading education association, we respectfully offer the following comments to the U.S. Department of Education (ED) regarding the interim final rule that aims to clarify how public school districts must use their Coronavirus Aid, Relief, and Economic Security Act (CARES Act) funds to provide equitable services to nonprofit private schools.

Through the passage of the CARES Act, K-12 public schools will receive \$13.2 billion from the Elementary and Secondary School Education Relief (ESSER) fund and a portion of the \$3 billion allotted to governors through the Governors Emergency Education Relief (GEER) fund. These funds are sorely needed by our nation's public schools, which rely on state government appropriations that are now subject to the detrimental economic effects of the COVID-19 pandemic. Contrary to congressional intent, ED's interpretation of the CARES Act equitable services requirement will force public schools to send an unprecedented and inequitable amount of their emergency funds to private schools.

Although CARES Act funds were calculated and directed to local school districts using existing Title I formulas, ED's interpretation of the equitable services provision in the law is estimated to send over \$44 million in Texas' emergency education funds to students in nonprofit private schools regardless of wealth or poverty. As codified in ED's interim final rule, this interpretation distorts the intention of equity promulgated through the longstanding equitable services provision of federal law, which aims to ensure that students who would otherwise be served through federal programs in a public school receive the same quality of education in the private school of their choice.

A recent memo by the nonpartisan Congressional Research Service to the House Education and Labor Committee argues that a straightforward reading of the CARES Act equitable services requirement provides evidence that congressional intent was to direct school districts to use their emergency funds on traditionally eligible nonprofit private school students under section 1117 of the Elementary and Secondary Education Act. Such eligible children are at risk of failing to meet the state's academic standards and are economically disadvantaged, have disabilities, or are migrant children or English language learners. Additionally, both Rep. Bobby Scott (D-Va.) and Sen. Lamar Alexander (R-Tenn.), chairs of their respective chambers' education committees, have publicly confirmed that ED has misinterpreted the law, skirting congressional intent.

The department's concession to education stakeholders who oppose their novel interpretation of the equitable services requirement was to create a "choice" for public school districts: either use the CARES Act funds only on Title I students and be held to the traditional interpretation of equitable services requirements, or use the CARES Act funds on all students and follow ED's inequitable rules. Unfortunately, this attempt at latitude is lost on districts that likely will be

The Association of Texas Professional Educators (ATPE) has been a strong voice for Texas educators since 1980. It is the leading educator association in Texas with approximately 100,000 members statewide. With its strong collaborative philosophy, ATPE speaks for classroom teachers, administrators, future, retired, and para-educators and works to create better opportunities for more than 5 million public schoolchildren. ATPE is the ally and the voice of Texas public school educators.

forced to use some portion of their CARES Act funds on non-Title I students as they shore up their budgets during this economic crisis. The work required to carry out new consultation and paperwork requirements with all nonprofit private schools within their bounds is an unnecessary burden on public schools whose employees have already been working beyond overtime to prepare for a safe, healthy, and effective return to schools in the fall.

As the largest educator association in the state of Texas and the largest independent educator association in the nation, ATPE respectfully requests that ED revise its rule to follow a strict and straightforward reading of the CARES Act equitable services provision. These emergency funds were meant for our nation's most vulnerable students as indicated by congressional intent and the Title I-based funding formulas chosen as the vehicle for sending CARES Act funds to states and school districts. ED's diverting these funds to private school students who may not even need them will only deepen the educational crisis facing our nation.

ATPE appreciates the opportunity to provide feedback during this process and invites ED staff to reach out to us for any additional information. Contact ATPE Governmental Relations at (800) 777-2873 or government@atpe.org.