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May 28, 2020

MEMORANDUM

TO: Superintendents

FROM: Ryan Stewart, Ed.L.D.

RE: CARES Act and Equitable Services in New Mexico

In this Memorandum, New Mexico Public Education Department (PED) is confirming the directive that each school district engage in meaningful consultation with all non-public schools within its geographic boundaries to determine whether they wish to receive equitable services under the Coronavirus Aid, Relief, and Economic Security ([CARES Act](#), Pub.L. 116–136). Such consultation is necessary regardless of the non-public schools’ past participation in equitable services under Title I of the [Elementary and Secondary Education Act of 1965](#).

PED also is confirming its guidance that districts calculate equitable services allotments by counting only those students who live within Title I attendance areas and who are from low-income families to generate the equitable share for equitable services calculations. (See Section 1117 of the [Elementary and Secondary Education Act of 1965](#).) This is consistent with PED’s reading of the plain language of the CARES Act and understanding of decades-long interpretations, through October 2019, of the Elementary and Secondary Education Act of 1965 by the U.S. Department of Education (ED); long-standing equitable services calculations under Title I criteria; and Congressional intent in enacting the CARES Act.

PED’s interpretation of Congressional intent is supported by the fact that the amount of CARES Act funding received by LEAs and states is calculated under Title I criteria. Equity and logic dictate that the amount of equitable services received by non-public schools under the CARES Act also must be calculated pursuant to Title I criteria. As stated by the Council of Chief State School Officers (CCSSO) in a [May 5, 2020 letter to ED](#), Congress “intended to concentrate ESSER funds on poverty and its harmful impacts in overcoming the COVID crisis”.

PED first provided this directive to all local educational agencies (LEAs) in the [May 14, 2020 Memorandum regarding the Elementary and Secondary School Emergency Relief \(ESSER\) Fund](#).

On [May 22, 2020, ED wrote a response to the CCSSO letter](#), indicating an intention to engage in rulemaking about equitable services determinations.

PED, along with many other states and legal organizations, strongly disagrees with ED's interpretation of the CARES Act, and therefore we reiterate our guidance that equitable services should continue to be calculated in the manner in which it is calculated under Title I. This approach is consistent with a plain reading of the statute. We recognize that this creates the possibility for legal challenges in the future. Although PED does not recommend it, any district that is so inclined may choose of their own accord to allocate equitable services according to the ED guidance. Regardless of the equitable services methodology used, school districts are expected to provide non-public schools with equitable services as quickly as possible so that both public and non-public schools may begin using ESSER Funds for COVID-19 relief measures.

If you have any questions about this advisory, please contact gabriel.baca2@state.nm.us or (505) 670-8402.