



**Memo to ACSI Member School Leaders**  
**CARES Act Equitable Services Interim Final Rule (IFR)**  
**Thursday, June 25, 2020**

Today the U.S. Department of Education announced an interim final rule (IFR) governing equitable services under the CARES Act. As schools know, there has been widespread conflict over the question of the formula to use to determine the amount of funds dedicated to equitable services for private schools. ACSI has discussed this conflict in multiple Legal Legislative Webinars about the CARES Act and provided guidance to schools on what to look for and how to argue their position.

**What was the conflict?** The conflict was between whether the local education agency (LEA) had to count the total student population or only the Title I student population when dividing the public and private proportions of the CARES Act funds it received. The U.S. Department of Education (USDE) issued guidance on April 30, 2020 indicating that LEAs must use a count of the total student population since the CARES Act is not a Title I program and is designed to serve all students during an emergency. Public school advocates insisted the proportion must be based on the Title I student population. Different states and LEAs began to follow one or the other. The conflict became nationwide.

**What is an Interim Final Rule (IFR)?** Today the USDE issued a draft of its IFR which updated the original guidance and gives it the force of law. An IFR takes immediate effect. There will also be a 30-day public comment period at the end of which the USDE may choose to amend the *interim* final rule before issuing a *final rule*. When the USDE formally publishes the IFR in the Federal Register, ACSI will alert schools and encourage them to submit public comment if appropriate. There is time yet for this.

**What does the IFR say?** The IFR gives LEAs two options. An LEA can base its calculation on the total student population and thus provide services to private schools based on their proportionate student count as the original guidance required. However, LEAs now also have an option to base their calculation on the Title I student population as long as they spend the resulting funds only on their own Title I students and ensure that the LEAs supplement, not supplant, other funding.

**What does this mean for your school?** Some states already follow the earlier USDE guidance. If so, it is to be hoped they will continue to do so. For others, the question will be which option your LEA chooses to follow. If your LEA chooses to base the proportionate share of its funds on the **total student population**, then a greater proportion of funding for CARES Act equitable services will likely be available for your school. If your LEA chooses to base the proportionate share of its funds on the **Title I student populations** of public and private schools, then it is possible there will be fewer funds available to provide CARES Act equitable services for your school. In short, whatever funds are available for equitable services by the LEA to private schools will be based on one of those two student population counts – the total or the Title I student count. (It is worth noting that there may indeed be cases where the opposite is true: the Title I student count could be larger among private schools than public. In that case, more funding of equitable services would be available).

**What does the future hold?** It remains to be seen how LEAs and others will respond. Many may simply pick one of the options and allow things to progress. If private schools have concerns, they will continue to use the usual ombudsman process. A less desirable possibility could be lawsuits against enforcement of the IFR. That worst-case scenario would continue the current chaotic state of affairs in places where the conflict rages.

Secondly, the public comment period will be an opportunity to speak into the IFR and to seek adjustments. It is early and we continue to evaluate the impact of the IFR.

This IFR is a bit of a mixed result. In an ideal world, one may wish it had simply put into place the original guidance in order to ensure equity for all students. However, one can appreciate the desire of the USDE to accommodate its critics as far as equity would allow.

Please be watching for more information about the public comment process once the IFR is formally published in the Federal Register.

**Below is the Statement released by the USDE Office of Non-Public Education (ONPE) with links to the original documents for your reference:**

Dear Non-Public School Colleagues,

The U.S. Department of Education has sent to the *Federal Register* for publication an Interim Final Rule (IFR) to codify its interpretation of the equitable services provisions in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (Mar. 27, 2020) (Section 18005, entitled, “Assistance to Non-Public Schools”). A local educational agency (LEA) that receives funds under the Governor’s Emergency Education Relief Fund (GEER Fund) (section 18002) or the Elementary and Secondary School Emergency Relief Fund (ESSER Fund) formula grants (section 18003(c)) is required to provide equitable services to students and teachers in non-public schools “in the same manner as provided under section 1117” of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (section 18005(a)). The IFR outlines how LEAs receiving funds under a CARES Act program must calculate the amount available for providing equitable services to teachers and students in non-public schools—i.e., the proportional share.

**The IFR has been unofficially published [here](#) on the Department’s website.** Once the rule is officially published in the Federal Register, it will be effective immediately and open for public comment for 30 days. We encourage you to take time to read the entire IFR.

The IFR supersedes guidance on calculating the proportional share that the Department published on April 30, 2020, titled [Providing Equitable Services to Students and Teachers in Non-Public Schools under the CARES Act Programs](#) (see specifically portions of questions 7 and 10). Interested parties should read this guidance in conjunction with the IFR and be aware that the Department will revise the guidance to reflect the provisions in the IFR.