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July 28, 2020

Amy Huber
U.S. Department of Education
400 Maryland Avenue, SW, Room 3W219
Washington, DC 20202

RE: Docket ID ED-2020-OESE-0091

Dear Ms. Huber:

On behalf of the Council for Exceptional Children (CEC), the largest international professional organization dedicated to improving educational outcomes for infants, toddlers, children, and youth with disabilities and/or gifts and talents, thank you for the opportunity to provide comments on the U.S. Department of Education (Department) Interim Final Rule (Rule) addressing the *CARES Act Programs: Equitable Services to Students and Teachers in Non-Public Schools* published in the July 1, 2020, Federal Register.

CEC opposes the Rule, which aims to siphon away funding intended for the public school system, disregarding the intent of the U.S. Congress under the Coronavirus Aid, Relief, and Economic Security (CARES) Act *and* in violation of the Elementary and Secondary Education Act (ESEA) regarding the provision of public funds to non-public schools. CEC opposes this Rule for the following reasons:

I. The Rule harms educators who support students with disabilities.

By diverting funding away from public schools that rely heavily on federal education dollars, the Rule disrespects and undermines the ability of educators and other personnel at the program, school, and district level who support students with disabilities. The Great Recession provides us with clues about the staffing shortages we can expect during this pandemic. Unfortunately, we have already seen that in April alone, more K-12 public school jobs were lost than in all the Great Recession. Half of the losses between March and April were among special education teachers, tutors, and teaching assistants. These educators are critical to ensuring students receive a free and appropriate public education, and their value cannot be understated. To support school reopenings during the pandemic, CEC has issued *Key Considerations for Special Educators and the Infants, Children, and Youth They Serve as Schools Reopen*. These considerations are reliant on a well-funded public school system. CEC believes that through CARES, Congress intended to support our most vulnerable students through investing in our public-school system. These investments, including supporting the educator workforce, are critical to ensuring that vulnerable students can continue to learn and thrive. Indeed, the CARES Act funding is essential to helping schools meet their staffing requirements.



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II. Private schools are not held accountable for the education of students with disabilities.

Students with disabilities do not have equal access to private schools and are often excluded through admission or other policies. Additionally, unlike public schools, private schools are not required to conform with the federal laws that provide fundamental rights to students with disabilities to afford them access to a high-quality education. Thus, regardless of where a student's funding for private school originates, including through federal funds, private schools are not held accountable for providing students with disabilities the individualized education and services required by the Individuals with Disabilities Education Act (IDEA). CEC has a long history of ensuring that every student with a disability has access to these and other rights afforded under the law. Its members, for whom IDEA is a driving force, work every day to ensure students receive the highest quality education services. We take issue with federal support for non-public schools that are not held to the same requirements.

III. Public schools need federal education dollars to address the challenges of the pandemic.

CEC has a long track record of opposing the use of public education dollars for private education. Our members work in all manner of K-12 settings across the U.S. They are especially aware of the profound disparity that exists in districts and schools impacted by poverty – whether it be in rural or urban settings. We know how crucial federal education dollars are to ensuring cross-budget and cross-functional teams - comprised of general and special education teachers and specialized personnel who work together to provide the educational supports and services that low-income students with disabilities need. The impact of the Rule on public schools and their staff would add further strain to a system that has been particularly hard-hit during the pandemic. Most importantly, a reduction in critical funding significantly hampers a school team's ability to ensure students with disabilities are provided a free appropriate public education in the least restrictive environment required by law – whether via remote/distance learning or in-person.

IV. The Rule disregards two federal statutes.

The Rule directly conflicts with the purpose and intent of Section 1117 of the ESEA which has consistently been interpreted by the Department to require the Local Education Agency (LEA) to calculate the required equitable participation of non-public schools based on the *number of low-income children in each participating non-public school in the LEA*. This purpose and intent are explicitly equity-driven, designed to support the most vulnerable students in our system. The Rule also ignores Congressional intent in the CARES Act related to the Elementary and Secondary School Emergency Relief Fund (ESSERF) requirement that funds be distributed to states and LEAs through ESEA's Title I, Part A formula. Through the CARES Act, Congress



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provided funding for 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.” (Section 18005(a) of the CARES Act.) Congress did not, through the CARES Act, change the equitable services provision of ESEA.

As shared above, CEC takes significant issue with the Rule and urges the Department to immediately rescind it and support the allocation of Title I Part A funds as Congress intended so that our most vulnerable students are supported, and our public school system does not experience further financial erosion. Thank you for the opportunity to comment.
Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer J. Lesh".

Jennifer J. Lesh, Ph.D.
President
Council for Exceptional Children