



# UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

October 30, 2020

Dr. Skinner  
Dr. D. Merle Skinner  
ACSIPA & ACSI  
merle\_skinner@champion.org

Dear Dr. Skinner:

Thank you for your e-mail sent to Secretary of Education Betsy DeVos on May 29, 2020 regarding Equitable Services under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Your letter has been forwarded to the Office of Elementary and Secondary Education (OESE) and I am pleased to respond.

On July 1, 2020, the U.S. Department of Education (Department) published an Interim Final Rule (IFR) regarding equitable services under the Coronavirus Aid, Relief, and Economic Security (CARES) Act<sup>1</sup>. The intent was to treat public and non-public schools as equitably as possible because the pandemic affected all students no matter where they attend school. However, on September 4, 2020, in *NAACP v. DeVos*, the U.S. District Court for the District of Columbia issued an opinion<sup>2</sup> and an order<sup>3</sup> vacating the IFR. The Department strongly, but respectfully, disagrees with the ruling. Nevertheless, we respect the rule of law and will enforce the law as the courts have opined. The Department will not appeal these rulings. Accordingly, the IFR is no longer in effect.

The Department will not take any action against States or local districts that followed the guidance and/or the IFR prior to notice of the court's decision. Going forward, districts must calculate the minimal proportional share for CARES Act equitable services according to the formula provided in Section 1117(a)(4)(A) of the ESEA of 1965. Section 1117 requires robust

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<sup>1</sup> <https://www.govinfo.gov/content/pkg/FR-2020-07-01/pdf/2020-14224.pdf>

<sup>2</sup> [https://oese.ed.gov/files/2020/09/NAACP-v-DeVos-DDC\\_Opinion-Granting-Partial-Summary-Judgment.pdf](https://oese.ed.gov/files/2020/09/NAACP-v-DeVos-DDC_Opinion-Granting-Partial-Summary-Judgment.pdf)

<sup>3</sup> [https://oese.ed.gov/files/2020/09/NAACP-v-DeVos-DDC\\_Order-granting-Partial-SJ-09-04-2020.pdf](https://oese.ed.gov/files/2020/09/NAACP-v-DeVos-DDC_Order-granting-Partial-SJ-09-04-2020.pdf)

400 MARYLAND AVE. SW, WASHINGTON, DC 20202  
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consultation with private schools, among other things, and we will use our enforcement authority aggressively to ensure districts comply with this and other relevant equitable services requirements.

Thank you for your concern and your service.

Sincerely,

A handwritten signature in cursive script that reads "Frank T. Brogan". The signature is fluid and elegant, with a large initial "F" and a long, sweeping underline.

Frank T. Brogan  
Assistant Secretary  
for Elementary and Secondary Education.