

To: Superintendents, Program Administrators & Non-Public School Leadership

From: Dr. Jennifer McCormick, Indiana State Superintendent of Education

Date: Wednesday, July 1, 2020

Subject: Indiana Department of Education's Response to United States Department of Education CARES Act Final Interim Ruling

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In response to the United States Department of Education (USED) Interim Final Ruling (IFR), as it pertains to the Elementary and Secondary School Emergency Relief (ESSER) Fund of the *CARES Act*:

The Indiana Department of Education (IDOE) will submit public comment vehemently opposing USED's IFR and is also undertaking all legal means available to oppose the IFR released on Thursday, June 26, 2020. The IFR improperly interprets the plain reading of the law, which requires equitable services to be allocated in the "same manner as Sec. 1117 [Title I]", and rather applies a different method entirely alongside rules that conflict with the law. The IFR inequitably reallocates funds intended by Congress to be prioritized for children in poverty.

Until further legislation is passed or a legal decision is rendered, IDOE offers this guidance to ensure continuity of the already active ESSER applications and existing plans which may have already been obligated:

- Local education agencies (LEAs) are to continue using Title I as the calculation mechanism, which is based on poverty of children living within Title I attendance boundaries, not total enrollment.
  - IDOE is instructing LEAs to not follow the rule as written in the IFR at this time
  - IDOE will not be approving any applications or amendments that rely on the IFR-driven total enrollment calculations at this time
- If your entire district is Title I, in which every single school is designated as Title I, you may already be following the IFR method, in that you are technically only using the funds on Title I schools. However, in such situations, the IFR added a supplement not supplant provision to your use of the funding. This is significant. LEAs who are Title I district-wide will be able to remain using the Title I poverty-driven method of calculating equitable share no matter the outcome of the contested IFR; however, LEAs would be prohibited from "allocating CARES Act funds to Title I schools and then redirecting State or local funds to non-Title I schools." It would also mean LEAs who have decided to reduce their education funding with the hope of using CARES Act funding to backfill district-level budgets would not be compliant unless the rule is properly withdrawn or invalidated.

In a scenario where the challenge to the IFR is not successful, IDOE will utilize a portion of the 10 percent state set-aside to account for the requirements of the IFR. This will allow LEAs to continue with plans for the funding already determined for LEA-only purposes with an equitable share driven by poverty. If the rule is upheld or further legislation does not change the effect of the rule, IDOE will be allocating additional money to LEAs to then add to each of their non-public schools' budgets respective of the difference.

In conclusion, my decision to challenge the legality of the IFR was not taken lightly. The CARES Act was intended to assist those most in need, while ensuring equitable services to non-public schools. COVID-19 has affected everyone, but not equally. It is my responsibility and IDOE's obligation to ensure those most in need receive the appropriate support.