STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

GRETCHEN WHITMER
GOVERNOR

MICHAEL F. RICE, Ph.D.
STATE SUPERINTENDENT

MEMORANDUM

DATE: July 7, 2020

TO: Local and Intermediate School District Superintendents
Public School Academy Directors

FROM: Michael F. Rice, Ph.D., State Superintendent

SUBJECT: Federal Lawsuit on CARES Act Guidance

This afternoon, Michigan Governor Gretchen Whitmer, Attorney General Dana Nessel and I announced that Michigan and California are leading a multi-state lawsuit filed today in the U.S. District Court for the Northern District of California against U.S. Secretary of Education Betsy DeVos and the U.S. Department of Education for unlawfully and incorrectly interpreting the federal CARES Act.

Michigan and California partnered with Maine, New Mexico, Wisconsin, and the District of Columbia in the filing of the lawsuit.

Governor Whitmer, Attorney General Nessel, and I spoke with the media on this issue at 2:00 this afternoon. In a nutshell, the issue revolves around what I've shared publicly – that the U.S. Secretary of Education, first in her April 30 guidance and most recently last week in a rule, pushes local school districts toward a formula that is unmentioned in the CARES Act and would disadvantage public schools to the benefit of non-public schools.

Last week's rule differs from the U.S. secretary's April 30 guidance in that the guidance used a single formula that would have benefited non-public schools at the expense of our public schools. After the Council of Chief State School Officers, the professional organization of state superintendents, expressed concern in a May 5 letter that the formula violated the CARES Act and after others, including members of Congress, noted the discrepancy between the secretary's actions and the CARES Act's plain language, the U.S. secretary amended her guidance. In a rule issued July 1, the U.S. Department of Education required local education agencies to choose between two methods for allocating CARES Act funds to non-public schools for equitable services, neither of which is in the CARES Act.

The U.S. Department of Education's rule presents a choice: a choice between what the U.S. secretary said was the CARES Act requirement on April 30, and the Title I, Part A formula with two "poison pills" – (1) the restriction, that if followed, would require local public schools to serve only their Title I schools and none of their non-Title I schools and (2) a constraint requiring CARES Act funds to be used to supplement but not supplant current funding.

This is an issue with many details, but at base, it is simple. The U.S. secretary of education created guidance and then a rule that favored non-public schools at the expense of public schools in a way neither intended nor enacted by Congress. This siphoning off of public school funds to non-public schools is unacceptable, but particularly during a pandemic and given a significant decline in state revenue.

MDE's guidance remains the same: until this issue is clarified—either in federal court or in Congress—local school districts would be prudent to reserve the difference between the two formulas. Please share this communication with your district legal counsel, with whom you should confirm your short-term legal direction on this issue, and with your district business administrator. It is my hope that either the federal court or Congress provides greater clarity on this issue this summer, so that local school districts are able to plan for and use all the resources intended for them in the CARES Act.

I would like to thank Governor Whitmer for keeping us safe in the pandemic and for continuing to prioritize public education and public school students in her work. Additionally, I would like to thank Attorney General Nessel for representing us well in this lawsuit in support of public schools and public school children, with California and the other states involved.

cc: Michigan Education Alliance
Confederation of Michigan Tribal Education Directors