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DEPARTMENT OF EDUCATION
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MICHAEL F. RICE, Ph.D.
STATE SUPERINTENDENT

MEMORANDUM

DATE: May 28, 2020

TO: Local and Intermediate School District Superintendents

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

SUBJECT: Elementary and Secondary School Emergency Relief Fund – Equitable Services – MEMO #COVID-19-064

On May 7, 2020, you received memo [#COVID-19-51](#) from the Michigan Department of Education (MDE) that announced the local school district application for the Elementary and Secondary School Emergency Relief (ESSER) Fund. The ESSER application requires local education agencies (LEAs) to engage in timely and meaningful consultation with each eligible non-public school and to upload a copy of the consultation documentation.

On April 30, 2020, the U.S. Department of Education (USED) issued guidance to state education agencies (SEAs) entitled [Providing Equitable Service to Students and Teachers in Non-Public Schools under the Coronavirus Aid, Relief, and Economic Security \(CARES\) Act programs](#), which include the ESSER Fund. USED's equitable services guidance has been challenged relative to the proportion of ESSER Fund dollars allocated to non-public schools within each LEA. MDE has been working with the Council of Chief State School Officers (CCSSO), my professional organization, on this issue since USED issued its guidance. CCSSO wrote USED on May 5, 2020, to state that the USED equitable services guidance conflicts with the CARES Act statute and sought clarification. You can access the CCSSO letter [here](#). On May 21, 2020, I personally shared concerns about this issue in a phone conversation with U.S. Department of Education Secretary Betsy DeVos.

USED responded in disagreement with the CCSSO letter late on May 22, 2020, and reaffirmed its April 30, 2020 equitable services guidance. You can access the USED letter [here](#). The basis of USED's argument is that all children are adversely affected by the pandemic and therefore all should generate funding from the CARES Act, which has its genesis in pandemic relief. This argument sounds reasonable but is not. That all students are affected by the pandemic and that all students help generate resources during the pandemic are not the same. According to a plain reading of the CARES Act, the formula for distribution of ESSER funds within each LEA is the same

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as that for Title I Part A funds on an annual basis. In other words, the distribution of equitable services should remain unchanged and should continue to be based on the number of eligible low-income students in non-public schools relative to the number of eligible low-income students within the LEA.

MDE has been in conversation with state and national partners, and with legal counsel on this issue. USED is planning on issuing a proposed rule on this topic in the coming weeks and will seek input from the field regarding its distribution formula. USED's May 22, 2020 letter to CCSSO refers to this process. As this issue is not yet settled, LEAs should consider, at a minimum, **holding in reserve for now** the difference between what they would typically have distributed using the Title I Part A formula, and the amount they would distribute based on USED's April 30, 2020 guidance. In any event, **MDE strongly recommends LEAs seek their own legal advice on the distribution** and encourages LEAs to adopt an approach that protects them from exposure should USED's interpretation prove to be upheld.

Questions regarding the content of this memo may be directed to Kyle Guerrant, deputy superintendent for finance and operations, at GuerrantK@michigan.gov or 517-241-0062.

cc: Michigan Education Alliance
Confederation of Michigan Tribal Education Directors