The Kansas Association of School Boards writes to submit comments in opposition to Docket ID ED–2020–OESE–0091, the U.S. Department of Education's Interim Final Rule regarding equitable funding distribution by Local Education Agencies (LEAs) of funding for education under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that was passed to help schools impacted by COVID-19.

This proposed rule has already caused uncertainty for states and unduly delayed the release of these funds to local public-school districts, contrary to the intent of Congress which passed the legislation to deal with a national emergency. Further, this unnecessary change in normal process threatens quick disbursement of these funds and will negatively impact public school students across the nation. In Kansas, ninety percent of the state's 500,000 students attend public school.

The CARES Act directs local educational agencies (LEAs) that receive education stabilization funds to provide equitable services to non-public schools in the same manner as provided under Title I of the Elementary and Secondary Education Act (ESEA). Title I has always been premised on supporting schools with high concentrations of students from low-income families in order to direct federal resources to students in need. Title I's equitable services provision is no different. LEAs determine how much Title I money to spend on services for eligible private school students, based on poverty levels. This was confirmed by the Department of Education last October.

In direct contrast to its earlier guidance to school districts regarding compliance with equitable services to disadvantaged students attending private schools, the Department's CARES Act equitable services Interim Final Rule directs a school district that chooses to use CARES Act funding for students in all its public schools, to calculate the funds for equitable services based on **all** students enrolled in private schools in the district.

This new allocation method is not the same manner as the established Title I program distribution for disadvantaged students under the Every Student Succeeds Act (ESSA), and is also inconsistent with the statutory intent of this provision in the CARES Act.

The Department's new Interim Final Rule overlooks that CARES Act funds, specifically Elementary and Secondary School Emergency Relief (ESSER) funds, are allocated to states and LEAs based on their respective share of FY19 Title I dollars. That is, the allocation of ESSER funding to both the state and local levels is driven by the concentration of low-income students, and the calculation of the allocation depends on how many low-income students reside in each state and district in accordance with section 1117 of ESSA Title I.

The Interim Final Rule regarding providing equitable services under CARES Act programs is inconsistent with this well-established precedent. To be consistent with both the historical application of equitable services, and to treat public and private schools equitably under the CARES Act, this rulemaking must be revised to ensure that the equitable services share for private schools is determined by poverty rates rather than overall enrollment.

Absent these edits, the CARES Act equitable services rule is inequitable and creates an environment where wealthy children in private schools are counted and used to generate the equitable services share of ESSER for their private schools at the direct expense of low-income children remaining in public schools.

Further, this Interim Final Rule overlooks the fact that several private schools have also benefitted from other COVID-19 recovery programs, such as the Paycheck Protection Program, of which public school districts are not eligible to access.

To restore equity within the equitable services rule, KASB urges the Department to revise it to allocate resources to private schools relying on a proportional calculation, based on the methodology used to provide equitable services under ESSA. Specifically, each LEA would calculate what proportion of its FY19 Title I allocation was used for equitable services and would make that same share of CARES funding available for equitable services to eligible students attending local private schools.

The provision that states that LEAs can use the traditional funding mechanism for equitable services as long as those LEAs spend funds only on students and teachers in Title I schools confuses the difference between the distribution and the allowed uses of funds. This is not a workable alternative.

As our nation and school districts work diligently towards COVID-19 recovery, our goal is to ensure that CARES Act resources are utilized to meet the needs of our public school students and educators, whose districts provide equitable services to eligible students enrolled in private schools. COVID-19 has disrupted education services among our students, educators, and school district communities and has taken tens of thousands of lives. We are highlighting this misapplication within the Department's education stabilization fund Interim Final Rule, and request that proportionate share determinations of ESSER funds must follow section 1117 of ESEA Title I. We look forward to your revision to ensure that the equitable share of CARES Act funding is calculated in a manner consistent with the CARES Act law and with Congressional intent.