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MEMORANDUM

TO: District School Superintendents
Chief Financial Officers for Florida Local Educational Agencies

FROM: Suzanne Pridgeon 

DATE: September 17, 2020

SUBJECT: **Equitable Services under the Coronavirus Aid, Relief, and Economic Security (CARES Act)**

The requirements relating to the provision of equitable services under the Coronavirus Aid, Relief, and Economic Security (CARES) Act have changed. The U.S. Department of Education has indicated as follows:

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. (The rule is available at: <https://www.govinfo.gov/content/pkg/FR-2020-07-01/pdf/2020-14224.pdf>). On September 4, 2020, in *NAACP v. DeVos*, the U.S. District Court for the District of Columbia issued an opinion and an order vacating the IFR. Accordingly, the IFR is no longer in effect.

Since the IFR is no longer in effect, local educational agencies (LEAs) must follow the provisions of the CARES Act, which indicate that LEAs receiving funds under either the Elementary and Secondary Education Relief (ESSER) Fund, or the Governor's Emergency Education Relief (GEER) Fund must provide equitable services "in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools." The judge in *NAACP v. DeVos*, 2020 WL 5291406 determined that "providing equitable services 'in the same manner' as Sec. 1117 means to use the same methodology and procedures described in Sec. 1117 – the formula that accounts for the number of children from low-income families."

Suzanne Pridgeon
Deputy Commissioner, Finance and Operations

In light of this decision, the Florida Department of Education (FDOE) recommends the following:

- LEAs should immediately consult with private school officials on potential changes to the allocation calculation and services as a result of the vacated IFR.
- LEAs should recalculate the equitable services portion using the calculation methodology set forth in section 1117 of the Elementary and Secondary Education Act of 1965 (ESEA), which accounts for the number of low-income students that reside in participating attendance school areas.
- If due to the services already provided in accordance with the previously binding IFR, the LEA does not have enough remaining balance for equitable services to fully fund the revised allocations, the FDOE recommends that the LEA use the balance remaining in the equitable services portion to bring the allocations among schools as closely as possible to the revised allocation amounts.
- The FDOE does not recommend attempting to recoup services already provided to private schools that are no longer eligible or that are to receive smaller allocations under the revised allocations. The FDOE also does not recommend that the district pay “out of pocket” to make up for the difference between the allocation a school is supposed to receive under the revised allocation and the amount available with the remaining balance. The FDOE recognizes that the original allocations were made based on binding regulation at the time and that, while the LEA must act promptly to reallocate funds, the reallocation cannot impact services already provided.
- In consultation with private schools, LEAs may serve any private school student or teacher with the allocated CARES Act funding.

Should you have any questions concerning this matter, you may contact Mari M. Presley, Assistant Deputy Commissioner, at Mari.Presley@fldoe.org or the FDOE’s equitable services ombudsman, Nicolle Leider at Nicolle.Leider@fldoe.org.

SP/mmp

cc: J. Alex Kelly, Chief of Staff
Eric Hall, Senior Chancellor
Matthew Mears, General Counsel
Jacob Oliva, Chancellor, Division of Public Schools
Dr. Dakeyan Graham, Director, Office of Independent Education and Parental Choice
Mari Presley, Assistant Deputy Commissioner, Finance and Operations
Melissa Ramsey, Vice-Chancellor, Strategic Improvement
Nicolle Leider, Equitable Services Ombudsman