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BY ELECTRONIC DELIVERY

May 18, 2020

Dear State Superintendent Ayala,

We write today to address the Illinois State Board of Education's (ISBE) decision to only partially comply with the United States Department of Education's (USDE) guidance on how to ensure the equitable participation of nonpublic schools and their students in the emergency CARES Act education funding.

We have been informed by your staff that ISBE intends to calculate the proportionate share of nonpublic schools and students for each school district according to the USDE guidance of using whole school populations, but then only allowing school districts to spend money for equitable participation based on a low-income student count until such time as a "final determination" on equitable participation is made.

As you know, the CARES Act financial assistance we are addressing is found in Section 18003, the Elementary and Secondary School Emergency Relief Fund, and the Act stipulates that these funds provide equitable services for private schools once the money reaches the Local Education Agency level:

Sec. 18005. (a) IN GENERAL – A local education agency receiving funds under sections 18002 or 18003 of this title shall provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in nonpublic schools, as determined in consultation with representatives of nonpublic schools.

Furthermore, on April 30th, the USDE issued regulatory guidance on CARES School Emergency Relief Funding that stipulated equitable share should be determined by the entire nonpublic school population within an LEA. The specific language can be found on page 6 of the guidance and reads:

C. How does an LEA calculate the proportional share?

To calculate the proportional share for equitable services under the CARES Act programs, an LEA determines the overall number of children who are enrolled in public schools and non-public schools in the LEA that wish to participate under one or both CARES Act programs. Using the proportion of students who are enrolled in participating non-public schools, the LEA determines the amount of funds available for equitable services based on that proportional share of the LEA's total allocation under each CARES Act program separately."

It appears to us that the lawful enactment of the CARES Act, its provisions providing equitable participation for nonpublic schools, and the issuance of guidance from USDE on how that equitable participation is to be calculated is in fact the “final determination.” We are unaware of any other instance in which the mere introduction of alternate legislation, particularly legislation which has no chance of passage by the United States Senate nor approval of the President of the United States, was or should be used as casting doubt upon current law.

We are extremely grateful for Congress’ recognition of our important educational work and the adverse effects COVID-19 has had upon it. In particular, we are grateful to Mayor Lightfoot and Senator Durbin for their leadership in making sure proportionate share benefits were included in the CARES Act. We are also appreciative of ISBE’s careful consideration of the Act, and your staff’s open lines of communication. However, we believe your approach – which fails to fully implement the CARES Act and DOE guidance – is a mistake and is harmful to the more than 130,000 students in 461 Catholic schools across Illinois. The CARES Emergency Relief is needed as soon as possible by both public and nonpublic schools. We regret your agency’s decision to delay that critical need to nonpublic schools based on nothing more than proposed legislation. Again, this is detrimental to the CARES Act’s purpose and sets bad precedent.

We are relying on your leadership to ensure the educational relief funding in the CARES Act is utilized as intended. Our Catholic schools have been closed since March 14th, and we have undertaken strong efforts to keep our school families whole while educating their children through a variety of remote and e-learning techniques. We have also worked extremely hard to care for the needs of our schools’ staff and families, providing meals when needed and other support as necessary. This is an incredible challenge for us all, but we have not wavered, and we deserve the support deemed necessary by the federal government.

Should ISBE fail to fully implement the CARES Act and USDE’s guidance, we reserve the right to act in defense of the law and our rights under it, including but not limited to a formal complaint to the USDE.

We have been grateful for our partnership with your agency and are confident that we can continue to work positively together through the current COVID-19 response. Thank you again for your attention to this matter. If we can be of any assistance, please let us know.

Sincerely,

Dr. Jim Rigg
Superintendent, Archdiocese of Chicago

Rev. John Belmonte
Superintendent, Diocese of Joliet

Mr. Mike Kagan
Superintendent, Diocese of Rockford

Dr. Sharon Weiss
Superintendent, Diocese of Peoria

Ms. Brandi Borries
Superintendent, Diocese of Springfield

Mr. Jonathan Birdsong
Superintendent, Diocese of Belleville

CC: Governor J.B. Pritzker
Dan Hynes, Deputy Governor
Jesse Ruiz, Deputy Governor
Denise Blaney, Ombudsman