

1300 Pennsylvania Ave., NW
#190-433
Washington, DC 20004
844-883-CAPE(tel)

www.capenet.org

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March 20, 2020

The Honorable Lamar Alexander
Chairman
Committee on Health, Education,
Labor and Pensions
United States Senate
428 Senate Dirksen Office Building
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education,
Labor and Pensions
United States Senate
428 Senate Dirksen Office Building
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

The non-public school community would like to raise immediate concerns regarding Section 4511 of the CARES Act, introduced in the US Senate on March 19, 2020. Specifically, the waiver authority given to states in the CARES Act is overly broad. We request that language be added to more clearly define the scope of the following section:

SEC. 4511. NATIONAL EMERGENCY EDUCATIONAL WAIVERS

(b) APPLICABLE PROVISIONS OF LAW.—

(1) IN GENERAL.—The Secretary of Education may waive any statutory or regulatory requirement (such as those requirements related to assessments, accountability, allocation of funds, and reporting), for which a waiver request is submitted under subsection (c), if the Secretary determines that such a waiver is necessary and appropriate as described in 2 subsection (a), under the following provisions of law:

(A) The Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

Non-public school students and teachers receive services under The Elementary and Secondary Education Act of 1965, today called the Every Student Succeeds Act (ESSA). ESSA requires equitable services to be provided to non-public school students and their teachers, and consultation to occur before any decisions are made by the local education agency (LEA) about equitable services. **If LEAs were to be granted a waiver under the CARES Act from the allocation of funds to equitable services, non-public schools would be left with no access to federal education program services.**

While there is a reasonable argument to be made that public schools should be given flexibility regarding state assessments and reporting requirements to the US Department of Education in this emergency, **it is critical that non-public schools not have equitable services limited or even withdrawn under Titles I, IIA, III or**

IV. We request a specific limitation to ensure that the secretary may not waive equitable services for non-public schools.

Secondly, paragraph 3 of the same section allows no more than 15 days for the secretary of education to approve or disapprove the waiver requests. This timeframe is far too short. A failure to provide sufficient time for proper consideration of waiver requests could be an invitation to overreach in those requests, potentially to the detriment of the non-public school community.

Third, under the CARES Act, the secretary is given 30 days to report to Congress on additional waiver authority under the Individuals with Disabilities Education Act (IDEA). Again, students with disabilities who are parentally placed in non-public schools should be protected against any waiver request from an LEA asking to not allocate funds to the non-public school proportionate share. Such a waiver would leave parentally placed students in non-public schools with no access to services under IDEA. We ask that the legislation clearly specify the scope of the new waiver authority in order to ensure that the determination of the proportionate share and the provision of equitable services to non-public schools remain a necessary requirement even during this emergency.

Finally, as currently drafted, the CARES Act contains no mention of specific resources for schools such as what is found in the proposed Murray/Scott education relief package. We encourage Congress to work to provide all schools – public and non-public – with the additional resources necessary to respond to this national emergency. America's students, their families, and the teachers and administrators who operate all of our nation's wide and diverse array of schools are in need of assistance in this time of crisis. We thank you for your urgent attention to this situation.

Sincerely,



Michael Schuttloffel
Executive Director