STATE OF CONNECTICUT

DEPARTMENT OF EDUCATION

TO: Superintendents of Schools
School Business Officials

FROM: Kathy Demsey, Chief Financial Officer

DATE: September 16, 2020

SUBJECT: CARES Act Equitable Services and Title I Allocation

I am writing to update you on the calculation of the "equitable services" set-aside for nonpublic schools under the CARES Act, Elementary and Secondary School Education Relief (ESSER) fund.

You will recall the Connecticut State Department of Education (the CSDE) has notified districts of a national dispute in how the "equitable services" provision of the ESSER fund was to be implemented. On July 8, 2020, the CSDE updated school districts that based upon Secretary DeVos' and the United States Education Department's (USED) adoption of a legally enforceable expedited Interim Final Rule (IFR), the online ESSER grant application would be amended to reflect the new requirements of the IFR.

Since that time, multiple federal courts invalidated USED's July final rule and April non-regulatory guidance for CARES Act equitable services requirements, determining that the USED acted beyond its authority in promulgating the IFR. In addition, on September 9, 2020, the USED published the following statement acknowledging the rule is no longer in effect as a result of **NAACP v. DeVos**, the most recent federal court ruling:

> ***USED September 9, 2020 CARES Act Update***
> *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. . . . 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 Accordingly, the IFR is no longer in effect.*

In light of this statement from the USED, and the federal court rulings, the CSDE recommends that all school districts follow the Equitable Services rules and practices under Section 1117 of ESEA, and do not spend more than the Title I methodology calculation amount, which was provided to you as an estimate on June 8, 2020 and is attached again for your convenience.

For those school districts that already utilized the 2019-2020 Title I Proportionate Share option, this change will permit the remaining public school funding to be used for all schools, not just those are that Title I schools. For those districts that used the IFR calculation with total enrollment, a recalculation using the Title I methodology is permitted. In both cases, school districts may wish to reserve the difference in funding until there is either further USED guidance or it is clear what the final decision of the courts will be, if there are appeals. **As a reminder, the ESSER funding is available to be obligated through September 30, 2022.**

Please consult with your legal counsel to ensure your actions are consistent with the law, and be aware that there may continue to be developments in this litigation.

If you have any further questions regarding this change, please call me at 203-206-4885. Thank you.