

Is CARES Act Funding Going to the Right Schools?

PUBLISHED ON
May 19, 2020

Federal funding aimed at helping schools during the COVID-19 pandemic could be heading away from the schools it intended to help most.

The Coronavirus Aid, Relief and Economic Security (CARES) Act authorized the appropriation of approximately \$30.75 billion for the creation of the Education Stabilization Fund, aimed at addressing the impact of COVID-19.

Rather than an allocation based on poverty level, recent guidance from the U.S. Department of Education suggests that agencies distribute education stabilization funds to nonpublic schools based upon total enrollment. In effect, this will create the inequitable result of a disproportionately large amount of education stabilization funds going to private schools, without regard to which school is educating a higher percentage of low-income students.

That could be counter to the language or intent of the CARES Act. It states that education agencies receiving CARES Act education stabilization funds must provide equitable services to students and teachers in nonpublic schools. Specifically, the CARES Act directs education agencies to provide these equitable services in the same manner as historically provided under Title I of the Elementary and Secondary Education Act.

Title I funds support schools with higher concentrations of students from low-income families to ensure that federal resources reach those in need. In calling for the application of a "low-income percentage of each participating public school attendance area . . . to the number of private school children *who reside in that school attendance area*," the act makes clear the longstanding precedent of distributing Title I funds based on poverty level.

Given the plain language of the CARES Act, many assumed the education stabilization funds would be allocated similar to this existing process. But that may not be the case.

This enrollment-based allocation at the local level is particularly concerning since education stabilization funds, particularly the Elementary and Secondary School Emergency Relief funds, are allocated to states and local education agencies based upon fiscal year 2019 Title I funds. In essence, poverty levels are considered for the initial federal appropriation, but are not considered in the state or local disbursement.

While many education agencies welcome the relief provided by the CARES Act, the ultimate details of what that will look like are still up in the air. A [letter](#) to U.S. Department of Education Secretary Betsy DeVos, co-authored by several national education organizations, asks to clarify these inconsistencies and provide further guidance consistent with the principles of the Elementary and Secondary Education Act.

If you have any questions about this latest guidance, please contact any member of the [Barley Snyder Education Practice Group](#).

DISCLAIMER: As we face an unprecedented time of legal and business uncertainty, we are working to

provide updates on the status of important legal news related to COVID-19. It is important to note that the situation is changing rapidly and the information provided in our alerts is not intended to create an attorney-client relationship. The information contained in our alerts is for general informational purposes only and should not be construed as legal advice or a substitute for legal counsel. If you have questions about your legal situation or about how to apply information contained in this alert to your situation or about how any other information found on our website may affect your business, you should reach out to one of our attorneys. We assume no responsibility for the accuracy or timeliness of any information provided herein or by any linked site. As information changes rapidly, users are strongly advised to verify any information before relying upon it.

:



Katelyn E. Rohrbaugh

Associate

Tel: (717) 814-5006

Email: krrohrbaugh@barley.com