

# United States Senate

May 14, 2020

The Honorable Betsy DeVos  
Secretary  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

Dear Secretary DeVos:

I write today to express concerns about the Department of Education's guidance on calculating the funding for the Education Stabilization Fund. Specifically, I am deeply troubled by the Department's interpretation of language in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), as illustrated in the Department's guidance, "Providing Equitable Services to Students and Teachers in Non-Public Schools Under the CARES Act Programs," from April 30, 2020. I urge you to rescind and correct this directive. In executing this ill-informed guidance, school districts will waste time, energy, and resources to calculate a funding allocation that runs contrary to Congressional intent.

The CARES Act appropriated more than \$13 billion for the Elementary and Secondary School Emergency Relief (ESSER) Fund. This funding is critical to Montana teachers and students. I fervently believe that all of our students, teachers, and education leaders across the state should be equipped with every resource at the federal government's disposal as students and teachers alike are forced to adapt to new learning environments as a result of the pandemic.

Section 18005 of the CARES Act explicitly notes that the ESSER Fund "shall provide equitable services in the same manner as provided under section 1117" of the Elementary and Secondary Education Act (ESEA) of 1965. This language does not leave any room for interpretation, and the calculation upon which local school districts must rely to allocate this money and ensure that services for students and teachers in non-public schools are equitable is quite clear. However, the guidance that your Department released on April 30 seems to ignore this directive and guides local educational agencies and school districts across the country to make a different calculation altogether. While I understand the importance of crunching numbers to get these dollars to districts as quickly as possible to respond to the evolving situation, I am concerned that the April 30 guidance does not faithfully execute Congressional intent.

In an effort to get federal resources to school districts efficiently, I am concerned that educational leaders in my state and others will begin to calculate each district's allocations based upon the Department's guidance. It is absolutely imperative that you rescind this guidance swiftly and promulgate updated direction for our nation's schools. Otherwise, valuable resources from our nation's dedicated educators and school leaders will be wasted in calculating wrong numbers based on the misguided April 30 guidance from the Department.

On April 13, 2020, I wrote to you about the importance of oversight of federal agencies in implementing the CARES Act and urged you to be "fully transparent and open to independent oversight" of the trillions of tax payer dollars going out the door. Per the Department's response to my inquiry, dated May 12, 2020, Deputy Secretary Mitchell Zais wrote, "We share your concern about protecting taxpayer funds from waste, fraud, and abuse and take very seriously our responsibility to cooperate with oversight of our implementation of the CARES Act." The Department's guidance does precisely the opposite. It ignores Congressional intent and doles out tax payer dollars in a manner counter to Congressional direction. I urge you to rescind this guidance, which will misdirect federal funds based on a false interpretation of the law.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jon Tester". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Jon Tester

cc: The Honorable Elsie Arntzen  
Montana Superintendent of Public Instruction