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August 31, 2020

Dr. Curtis Culwell
Executive Director
Texas School Alliance

Via email: curtis@texasschoolalliance.org

Re: TSA Federal Update

Dear Dr. Culwell:

The following information is provided relative to the federal activities of the TSA.

1. USDA Won't Extend School Meal Waivers

The USDA will let certain waivers expire that have enabled schools to serve meals more easily to students during school closures - such as flexibility to set up meal sites in convenient places around the community and to serve all children seeking a meal without any paperwork.

Without the flexibility, students in TSA districts will be able to receive meals only from the school where they are enrolled after being deemed eligible - a change that would create logistical barriers for many families. The expiration of the waivers likely will result in your food service administrators choosing to limit their days of operation and deny uncertified students in need access to healthy meals.

Republicans and Democrats have urged Agriculture Secretary Sonny Perdue to extend the waivers through the 2020-21 school year. Perdue responded that the USDA lacked Congressional authority to implement the extension, as it would function like a universal school meals program that has not been authorized by lawmakers.

The House Committee on Education and Labor called Perdue's decision "a major blow," with Chairman Bobby Scott (D-VA) predicting that "the tragic rise in child hunger across the country will surely get worse." Now, a broad coalition of governors, state and district superintendents, school administrators, classroom educators, parent groups, and other advocates are calling on Congress to ensure the USDA has the authority to extend these waivers. It is recommended that TSA submit a similar letter of concern to the Texas delegation.

2. Two Federal Judges Stop Rule that Directs CARES Act Funds to Private Schools

Last week, a Washington state judge issued an injunction to stop Secretary DeVos's rule on providing equitable services to private school students under the CARES Act. The rule encourages districts to set aside CARES dollars for private school students not as they do under Title I, but rather based on the total number of students in private schools, regardless of income. This interpretation received bipartisan criticism that it ran afoul of the law. TSA has also written in protest as part of the federal rule comment period (see letter from TSA, attached).

U.S. District Court Judge Barbara J. Rothstein agreed with our logic apparently, finding that the U.S. Department of Education (ED) subverted Congressional intent and hurt students most affected by the pandemic. She also questioned whether Secretary DeVos had the authority to condition CARES Act funds in this manner.

However, this is not the only lawsuit challenging the equitable services rule, and attorneys for ED are arguing in a separate case that the injunction only applies to schools in Washington state. However, the judge in that case also ruled against DeVos. A second federal judge has ruled against Secretary of Education Betsy DeVos and her department's controversial rule governing how much coronavirus aid relief public schools must set aside for private school students.

Public school officials and advocates have sharply criticized her rule, saying it siphons money away from their schools at a time of immense need for many students during the pandemic.

U.S. District Judge James Donato granted a preliminary injunction blocking the U.S. Department of Education from implementing or enforcing its interim final rule in several states and school districts while he hears arguments in the case. It marks the second time in less than a week that a federal judge has ruled against DeVos on the issue. In both cases, judges issued blunt criticisms of the directive.

The rule, which the department officially released on July 1, governs virus relief money in the CARES Act. It directs schools to set aside money for what's known as "equitable services" for all local private school students, if they want to use the remaining money for all their local public schools. That's a departure from how federal law typically handles those services, which are normally provided to disadvantaged and at-risk students in private schools.

DeVos and top department officials have justified the rule by saying that the CARES Act is clearly intended to benefit all students, since all students have been hurt by the pandemic. But her critics have alleged that the rule intentionally misreads the law and improperly diverts money away from disadvantaged students in traditional public schools.

In his order, Donato said that "there is a public interest" in allowing a certain portion of CARES money to benefit private school students. But "allowing the Department to rewrite the statutory formula for sharing education funds is manifestly not in the public interest," he wrote.

The judge for the Northern District of California didn't shy away from speaking bluntly about what he saw as the department's flawed interpretation of the CARES Act; at one point he said the department's defense of its rule was "'interpretive jiggery-pokery' in the extreme."

Donato also highlighted arguments from plaintiffs about the "irreparable harm" the rule was causing. "Wisconsin schools had to choose between diverting over $4 million of CARES Act funding to private schools or abandoning district-wide coronavirus preparation such as sanitizing school buses," he wrote.

On Aug. 21, U.S. District Judge Barbara J. Rothstein of the Western District of Washington issued a separate preliminary injunction blocking the department from implementing or enforcing the rule in a case brought by the state of Washington. Rothstein also took a very dim view of the department's argument, although it's unclear if Rothstein meant her preliminary injunction to apply just in Washington state or nationwide.

By contrast, in his order, Donato wrote that the department was "preliminarily enjoined from implementing or enforcing against plaintiffs" its rule about coronavirus relief.

Plaintiffs in the case are California, Michigan, Hawaii, Maine, Maryland, New Mexico, Pennsylvania, the District of Columbia, and school districts in Chicago, Cleveland, New York City, and San Francisco. TSA should determine with TEA as to whether it intends to implement the rule here in spite of these cases. If so, a brief to TEA arguing that such implementation is in contrast to the two injunctions may be something TSA can explore.

3. GOP Proposes "Skinny" Coronavirus Relief Package

Senate Republicans floated a smaller coronavirus relief package amid the impasse in negotiations between the White House and top Democratic leaders. In addition to much-needed funding for the U.S. Postal Service, the so-called "skinny" relief bill maintains most of the education provisions from Republicans' more comprehensive $1 trillion Health, Economic Assistance, Liability Protection, and Schools (HEALS) Act. The GOP is not budging from using federal relief funds to incentivize schools to reopen for in-person instruction this fall, despite the fact that school already has begun in many parts of the country and several districts offering in-person options have been forced to change their plans after COVID-19 outbreaks.

Democratic lawmakers already have dismissed the idea of a narrow coronavirus relief package - insisting on comprehensive legislation to address the severity of the pandemic. Members of Congress return to DC after Labor Day.

<u>Summary of the HEALS ACT:</u>

Overview

A) Funding: The overall bill does not include any additional budget aid for state and local governments, which will likely be a top consideration in how much officials at that level cut their education budgets in response to the economic slow down (see related Maintenance of Effort item in policy section). Topline level for education is $105 billion.

1) $1 billion for Bureau of Indian Education and outlying areas; $5 billion for GEERF (Governor's Fund); $70 billion to ESSERF (K12); $29 billion for higher education.

2) USED Secretary would have to disseminate money to states within 15 days of the bill becoming law.

3) For K12 Funding:

    a) Allocation. Would move to states based on overall population (60%) and on Title I share (40%).

    b) Private schools would be eligible for all the same funding that public schools are eligible for as long as they meet the same re-opening criteria.

    c) Allowable uses:

        (i) For the 1/3 of funds automatically available, allowable uses appear to be broad and flexible, pretty similar to the CARES act, covering things like sanitation, purchasing ed tech, responding to the pandemic, etc.

        (ii) For the conditional 2/3, includes additional flexibilities, like purchasing PPE, using flexible schedules to keep kids in isolated groups, buying boxed lunches, buying physical barriers, providing transportation, repurposing existing school rooms/space (including improving ventilation systems).

    d) Of the funding allocated to LEAs/private schools:

        (i) 1/3 would be available to all schools immediately; the remaining 2/3 would be available for reopening costs, with funding awarded based on certain minimum opening requirements (and other criteria established by the states).

        (ii) For the conditional 2/3: If an LEA provides in-person instruction for at least one-half the students for at least one-half the days, their funding would be automatically approved. For LEAs with no in-person instruction, there would be no money. For LEAs that provide SOME in-person, $$ would be reduced/awarded on a pro-rata basis.

        (iii) An LEA's plan must include a detailed timeline of when in-person instruction will occur, description of how many in-person instruction days/week are being offered, and an assurance the LEA will offer students as much in-person instruction as is safe and practicable.

e) Funding for private schools: SEAs must reserve a portion of the funds equal to the percentage of students enrolled in non public K12 schools in the state prior to COVID (a la equitable services). In order to receive these funds, a private school must meet in-person requirements, though theirs differ from those of public schools.

f) Any private school offering in-person instruction for at least half of their students for half of the days would be eligible to receive the full share. Private schools offering no in-person instruction would only be eligible for 1/3 of the amount of assistance per student; LEAs that provide some in-person would receive their share on a pro-rata basis.

B) Policy

1) Maintenance of Effort: States have to spend the same percentage of overall FY20/21 budgets on education as they did in FY19. Put another way, cuts to education are okay, so long as schools are cut at the same rate as other state programs. LEAs can pursue an MOE waiver. This is an improvement over CARES.

2) Liability: Provides a federal cause of action for COVID exposure claims against employers, including schools. The cause of action is the exclusive remedy for all claims against a defendant for personal injury caused by actual, alleged, feared or potential exposure to COVID. The bill covers coronavirus-related exposure injuries that occur between December 1, 2019 and October 1, 2024, and impacted parties would have to show LEAs were grossly negligent or demonstrated willful misconduct, and that they violated relevant state and local public health guidelines.

3) Private Schools: In addition to the private school carve out in ESSERF, the bill authorizes (but does not fund) a brand new voucher program, the Education Freedom Scholarships. This is NOT a federal tax credit, it is a one-time appropriation and can be used on any educational expense (private school, homeschool, etc.) and States would be required to set up tax credit entities to receive this funding.

4) Equitable Services: Language in how the new funds would be allocated is tighter than that of CARES. Does NOT include retroactive fix of CARES problem for CARES funding.

5) Homework Gap: No funding for homework gap is included in the bill. Yes, it is an allowable use of the broader ESSERF fund, but that is nowhere near as flexible as CARES was and is already grossly oversubscribed.

6) IDEA Flexibility: Provides ZERO flexibility for IDEA.

4. New Title IX Rule Takes Effect

Secretary DeVos's new Title IX rule, which details how schools and universities must respond to claims of sexual assault and harassment, has taken effect. The controversial rule, which was announced in May, became official earlier this month after a DC circuit court judge sided with ED in a lawsuit filed by seventeen states and Washington, DC.

The updated rule allows schools to use a "clear and convincing evidence" standard to decide if an assault claim requires a response - a higher bar to prove claims of misconduct than the "preponderance of evidence" standard recommended by the Obama administration in nonbinding guidance.

The rule, which carries the force of law unlike the Obama-era guidance, has been touted by Secretary DeVos as ensuring fairer treatment for those accused of misconduct. However, advocates worry it will discourage would - be complainants from coming forward, especially because colleges - but not K-12 schools - must now respond to complaints by facilitating hearings where representatives for the alleged perpetrator and victim can call witnesses. TSA districts need to pay particular attention to the training requirement in the bill and the public documentation of such training.

5. Democratic Party Adopts 2020 Platform

At the Democratic National Convention, the Democratic Party officially adopted its 2020 platform, including tripling Title I funding for disadvantaged students, supporting universal pre-K, and promoting school integration. In addition, the platform champions diversifying the teacher workforce and increasing educator pay and benefits. It also supports measures to increase accountability for charter schools and advocate for moving away from "high-stakes testing" - ideas that align with teachers' unions policy preferences, but at odds with many civil rights groups and other reform-minded advocates who support charters, accountability, and transparent reporting on student achievement.

The Republican Party is not adopting a platform at its convention, instead carrying forward its platform from 2016. President Trump did release a second-term agenda with just two education priorities: providing school choice to all students and teaching "American exceptionalism."

6. Accelerated Testers Waiver History

TSA enjoyed a major victory regarding a waiver request it originally helped be included in the ESSA when the law was passed. Regulatory changes had removed much of the intended flexibility. In May 2020, the Texas Education Agency (TEA) requested a waiver of the ESEA, as amended by the Every Student Succeeds Act (ESSA), §1111(b)(2)(C), to broaden the advanced mathematics exception to include all middle school students administered the State of Texas Assessments of Academic Readiness (STAAR®) end-of-course (EOC) assessments in mathematics, reading/language arts, and science. The USDE notified TEA of the approval of this waiver request on July 20, 2020.

As part of Texas's ESSA plan, TEA has been granted a waiver to expand the advanced mathematics exception beyond grade 8 students enrolled in advanced mathematics courses to include all middle school students who are administered a STAAR EOC assessment for mathematics, reading/language arts, or science. The USDE's approval of this waiver request eliminates the need for double testing.

Beginning in the 2020-2021 school year, a middle school student, who is completing instruction in a high school course that has a corresponding EOC assessment, will be administered the corresponding STAAR EOC assessment (not the grade - level assessment). The STAAR EOC assessment may be used to fulfill the student's graduation requirement and will be used for the campus' and district's accountability calculations. This waiver aligns assessment requirements with students' instruction, where possible. As required now in Title 19 of the Texas Administrative Code (TAC), §101.3011, students who have completed STAAR EOC assessments while in middle school must take either the ACT or the SAT once to fulfill federal testing requirements.

A copy of the waiver request and USDE response are available on the TEA website at https://tea.texas.gov/about_tea/laws_and_rules/essa/every_student_succeeds_act/. Dee Carney's advocacy was particularly helpful on this issue with both state as well as federal officials when we visited with Frank Brogan and others at USDOE in separate meetings.

7. Lawsuit claims every school district (including all TSA districts) and all state education agencies failed to provide FAPE during school closures

Every state and local school district in the country has been named as a defendant in a special education class action lawsuit filed July 28 in the U.S. District Court, Southern District of New York. The lawsuit alleges nearly one dozen violations of state and federal education laws, stating that students with disabilities were unable to receive the individualized services and supports in their IEPs during school closures this spring in response to the pandemic outbreak.

New York City Mayor Bill DeBlasio and New York City Chancellor of Education Richard Carranza are also named as defendants. *J.T. v. de Blasio,* No. 20 Civ. 5878 (S.D.N.Y. 07/28/20, complaint filed).

The 350 page complaint asks that all schools open for in-person instruction and provide instruction and services outlined in each student's IEP; issue pendency vouchers for parents who needed to hire professionals to carry out elements of their child's IEP; conduct independent evaluations of each student with a disability; reimburse parents for any expenses or loss of employment due to school closures; and pay unspecified punitive damages "based on the intentional and willful violations of the federal rights of parents and students."

The lawsuit identifies 104 student plaintiffs from 14 states, including Connecticut, Florida, New York, and Washington. Patrick Donohue, founder and chairman of the Brain Injury Rights Group in New York City, who is representing the plaintiffs, said the class action now includes more than 500 student plaintiffs from 25 states.

In an interview, Donohue said his goal is to have a court decision within the next few weeks. He said schools violated the IDEA's stay-put provision in the spring when they didn't reopen after being closed for more than 10 school days. The stay-put provision requires students remain in their current educational placement pending the resolution of an educational dispute.

"Schools did not maintain the status quo of the last agreed upon IEP," Donohue said. Closing schools forced students to move to a home placement, likely without formally changing their IEPs, Donohue said. The IEPs didn't say the child would be in the most restrictive environment without Donohue said "The IEPs didn't say the child would be in the most restrictive environment without receiving in-person services," he said.

What schools should have done in the spring after closing for two weeks was to reopen for special education students in order to provide their educational services entitled to them under the IDEA, Donohue said. "If a school district did all the right things, then I have no issue with them," Donohue said. "If you find them, I'll put them on a pedestal."

The issue of school closures has brought a variety of reactions, and litigation. Lawsuits have also been filed in Hawaii and Pennsylvania by the parents of students with disabilities who say their children were denied FAPE because of the spring school closures.

Teachers have voiced frustrations about school closures and their concerns about the safe reopening of schools. Special education teachers, service providers, and social workers in Chicago, for example, sued the U.S. Education Department and Chicago Public Schools, claiming the school systems placed unrealistic special education paperwork burdens on them during extended school closures due to the COVID-19 outbreak.

More litigation is likely, said several education administrative advocacy organizations. In a report to which TSA provided major input, published in July, the National School Boards Association; AASA, the School Superintendents Association; and the Association of Educational Service Agencies; said providing FAPE to students with disabilities during the pandemic is complex. The groups also said they worry about the costs of responding to pandemic - related special education litigation.

The Centers of Disease Control and Prevention has issued guidance expressing the benefits of in-person instruction but has also recommended safety precautions to reduce the spread of COVID-19 in school buildings. Because of continued fears of the spread of the virus and because of a high number of positive cases in their communities, some school systems such as Los Angeles Unified School District, District of Columbia Public Schools, and the Miami-Dade County School District have already announced they are planning to start the school year in a virtual-only setting.

In *J.T. v. de Blasio*, No. 20 Civ. 5878 (S.D.N.Y. 07/28/20, complaint filed), a putative class action arising out of the coronavirus-related school closures, parents of students with disabilities from 14 states are alleging that the switch to remote learning in the spring of 2020 resulted in widespread denials of FAPE.

The following is a brief overview of the 11 claims the students are pursuing against every district in the country, including all districts within TSA:

A. Section 1983: IDEA violations

Parents of students with disabilities sometimes use 42 USC 1983 , a provision of the Civil Rights Act more commonly known as “Section 1983,” to sue for violations of their children’s federal or constitutional rights. The parents here claim that the districts’ failure to maintain the students’ educational programming during the extended school closures violated their right to FAPE as guaranteed by the IDEA.

B. Section 1983: State law, 14th Amendment violations

The parents allege that the districts’ failure to implement their children’s IEPs as written amounted to a deprivation of FAPE without due process of law - a purported violation of state law and the 14th Amendment.

C. IDEA: Procedural requirements

According to the parents, the districts violated the IDEA’s procedural requirements by failing to provide notice of the changes in their children’s placement and services, and by modifying the students’ placements and services without parent input.

D. IDEA: Stay-put violation

The IDEA’s stay-put clause requires a district to maintain a student’s then-current educational placement while a dispute over the student’s identification, evaluation, placement, or services is pending. The parents claim that the districts violated the stay-put provision by changing their children’s placements and services “during the pendency of the due process complaint.”

E. IDEA: Substantive denial of FAPE

In this count of the complaint, the parents allege that the districts deprived their children of educational benefits by substituting remote learning for in-person instruction.

F. State law: Procedural violations

Each state has adopted its own procedural requirements, many of which mirror those found in the IDEA, to ensure students with disabilities receive FAPE. Here, the parents claim the districts’ failure to ensure parent participation and the right to due process amounted to procedural denials of FAPE.

G. Section 504: Denial of FAPE

According to the parents, the districts discriminated against the students by "unlawfully den[ying] access to appropriate educational services as compared to the educational services received by non-disabled students."

H. Section 504: Compensatory damages

The parents seek payment for all out-of-pocket expenses they incurred to arrange special education and related services for their children. They're also request compensation for any income or employment they lost after taking responsibility for their children's education.

I. Section 504: Punitive damages

The parents claim that the districts' "intentional and willful failure" to provide the students' FAPE entitles them to recover punitive damages, or damages intended to punish a party for wrongdoing.

J. ADA Title II: Disability discrimination

In this count, the parents allege that the district discriminated against the students on the basis of disability by failing to provide in-person instruction and related services that had been provided to other students with disabilities.

K. State law: Denial of FAPE

The final count of the complaint alleges that the districts' failure to provide in-person instruction violated all state laws protecting students with disabilities.

Obviously the plaintiffs face a significant procedural hurdle by attempting to have a diverse group of students certified as a class, not to mention extending New York federal district jurisdiction across the country. Importantly, the plaintiffs have attempted to "serve" the defendants, including TSA member districts with unorthodox and improper service of process. We will discuss this in detail if you wish at the meting.

8. FEMA Issues

The Federal Emergency Management Agency (FEMA) indicated that the agency intends to eliminate personal protective equipment (PPE) and disinfectants as eligible reimbursable expenses under Public Assistance for COVID-19.

FEMA may seek to tie eligibility to an arbitrary distinction between "response" and "reopening." This proposed change to PPE coverage continues a troubling pattern of shifting costs and responsibilities onto state and local governments, including state and local education agencies, when they can least afford it.

All plans for schools to reopen include built-in requirements for PPE. PPE is a fundamental element of any COVID-19 operation. Changing policy guidance in the middle of a pandemic is impractical, sows confusion, unnecessarily complicates the process of reopening, and disrupts daily operations for all those impacted, including our schools. These changes come with significant bureaucratic and administrative burdens for states during the auditing process at the exact time state and local resources are critically strained.

FEMA and the Administration have long maintained that every disaster is federally supported, state managed, and locally executed. AASA and ASBO have asked FEMA to waive the state cost share for COVID-19 assistance, to maintain the current guidance on emergency protective measures, and encouraged the Administration to provide clear guidance on eligibility of funding streams from across the federal government. We recommend that TSA do the same and also notify Texas representatives and Senators about the problem.

As more information is obtained, we will share with TSA.

Very truly yours,

Thompson & Horton LLP

Christopher P. Borreca

CPB/bg
Enclosure

cc: Dee Carney — ***Via email: dcarney@hillcopartners.com***
HillCo Partners

David Thompson — ***Via email: dthompson@thompsonhorton.com***
(firm)

July 30, 2020

Ms. Amy Huber
U.S. Department of Education
400 Maryland Avenue SW
Room 3W219
Washington, DC 20202

Re: CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools 34 CFR Part 76 [Docket ID ED-2020-OESE-0091] RIN 1810–AB59

Dear Ms. Huber,

I am writing this letter and submitting these comments as president and on behalf of the Texas School Alliance (TSA). TSA is an organization of forty of the largest Texas independent school districts that collectively educate about forty percent of the state's total pupil enrollment (or, about 2.1 million students), including over forty-four percent of the state's economically disadvantaged students who qualify for free and reduced price lunch and are eligible for federal Title I funds.

We write today in response to the US Education Department's (USED) interim final rule on CARES Act funding and equitable services to students and teacher in non-public schools. We write to express our strong opposition to the interim rule.

The interim rule, as drafted, conflicts with the CARES Act and has the potential to shift $1.3 billion from public schools to private schools. The burden of this flawed policy will rest on the shoulders of the vulnerable students Congress intended to benefit.

The CARES Act law directs local educational agencies (LEAs) that receive education stabilization funds to provide equitable services to non-public schools in the same manner as provided under Title I of the Elementary and Secondary Education Act (ESEA). Under Title I, LEAs use poverty counts to calculate the equitable services share. This is consistent with how LEAs themselves generate Title I funds, which is primarily based on the number of students from low-income families living in the LEA. Because LEAs receive the bulk of CARES Act funding based on Title I's poverty driven funding formulas, it is consistent that Congress directed LEAs to calculate the CARES Act equitable services share based on Title I's poverty driven equitable services rules.

Contrary to this approach, the interim rule effectively directs LEAs to calculate the CARES Act equitable services share based on the total number of students attending participating private schools in the LEA. This is not the "same manner as" equitable services are provided under Title I and therefore is inconsistent with the plain language of the CARES Act. Had Congress intended LEAs to calculate the CARES Act equitable services share based on total enrollments as suggested by the interim final rule, Congress would have directed LEAs to provide equitable services in the same manner as Section 8501 of the ESEA. Instead, Congress directed LEAs to provide services in the same manner as Section 1117, meaning Congress chose Title I's poverty-based method to generate the share over Title VIII's enrollment-based method.

This inconsistency has real effects for our member districts. If we were to set aside education stabilization funds for equitable services based on poverty as directed by the CARES Act it would amount to millions of dollars of our members' collective CARES funding. If we were to set aside education stabilization funds for equitable services based on enrollment under the interim rule it would amount to a far greater amount of additional money that our LEAs would have to use for private schools equitable services.

The interim rule purports to offer LEAs a choice to calculate the equitable services share based on poverty, but only if they limit CARES Act services to public school students in Title I schools while imposing no such limitation on services for private school students. Limiting services in public schools is inconsistent with the language and purpose of the CARES Act.

The interim rule falsely conflates the education stabilization fund's broad purpose with how the equitable services share should be calculated. The equitable services share is not based on how funds can be spent once the share is generated, but rather on the proportion of students who generate funds for the LEA in public versus private schools. In other words, funds for both LEA and private school services are generated based on poverty and then can be used for any allowable CARES Act activity. How an LEA spends funds for public or private school services has no role in how the equitable share is calculated.

It is neither fair nor responsible to issue an interim rule so late in the process, especially in the context of emergency federal appropriations. When the CARES Act was enacted, many LEAs acted swiftly to develop budgets based on the law's plain language and consistent with the urgent need for immediate support. Releasing an interim final rule now, with its profound effects both on the services LEAs can support with CARES Act funds and the amount they must spend for equitable services, significantly and unnecessarily complicates the process.

This interim rule injects unnecessary confusion into the field at the exact time that school systems across the nation – and private schools, as well – are working diligently to reopen in the fall. CARES Act funding is a critical source of support for schools reopening in the fall and the interim rule, as proposed, adds additional workload and headache to a process whose intent, history, and text are clear.

We respectfully request that USED withdraw the interim final rule so LEAs can provide equitable services as Congress plainly directed in the CARES Act.

Sincerely,

Curtis Culwell

Dr. Curtis Culwell
Executive Director, Texas School Alliance

ADDENDUM TO FEDERAL UPDATE:

Today, August 31, USDA announced that it will extend meal waivers to allow continued operation of the Summer Food Service Program (SFSP) and Seamless Summer Option (SSO) through December 31.Although many were pushing for waivers to extend these programs through the 2020-2021 school year, there were some federal concerns regarding budget authority and appropriations to afford a year-long waiver unless more funding is appropriated by Congress. However, USDA was able to extend these waivers through the end of the calendar year so this is still a big advocacy win!

- USDA Statement/Video from Ag Sec Perdue:https://www.facebook.com/watch/live/?v=640017843576341&ref=watch_permalink&source=email
- USDA Press Release:https://www.usda.gov/media/press-releases/2020/08/31/usda-extends-free-meals-kids-through-december-31-2020

More specifically, the following waivers were extended for the SFSP and SSO programs through 12/31/20:

- Area Eligibility, which allows meals to be provided in areas that don't meet the 50 percent area eligibility;
- Non-Congregate Feeding, which allows meals to be served outside of group settings (meals can be distributed at a site where families pick up the meals, as well as be delivered to children's homes);
- Meal Service Times, which provide flexibility to the meal service time requirements by allowing service outside of standard meal times; and
- Parents and Guardians to Pick Up Meals for Children, which allows a parent or guardian to pick up meals to take home to children.

While there is certainly reason to celebrate USDA's decision, TSA should continue advocating for Congress to add language in the next COVID relief funding package that appropriates sufficient funding and flexibility to allow these waivers to continue through the remainder of SY2020-2021.