



April 24, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker of the House
United States House of Representatives
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, D.C. 20515

RE: AASA Requests For Policy Flexibility in Next COVID-19 Package

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Pelosi, and Minority Leader McCarthy:

I write to you on behalf of AASA, The School Superintendents Association, and the Association of Educational Service Agencies (AESA). AASA represents more than 13,000 school system leaders across the country, ranging from chief executive officers, superintendents and senior level school administrators to cabinet members, professors and aspiring school system leaders. AESA is a professional organization serving educational service agencies (ESAs) in 45 states with 553 agencies nationwide with hundreds of thousands of staff members.

As district school leaders, administrators, instructional personnel, educators and support staff work tirelessly to ensure students are able to continue learning during the COVID-19 pandemic, this letter outlines the federal policies and support that will allow district and ESA leaders to ensure that critical federal, state and local resources are used efficiently and make certain our professionals can be focused on meeting the needs of children rather than abiding by federal administrative requirements that were never intended to be met during an unprecedented and lengthy school-closure. Our list and rationale for these policy requests can be found below.

Uses of Federal Funding and Obligation to Maintain Funding by States and Districts

In the CARES Act, Congress reinforced the requirement that states maintain their investments in education by including a "maintenance of effort" requirement for any state accepting funds. As we reflect on the Great Recession and the decision by states to waive their MOE obligations, we are deeply concerned that the CARES Act opens the door for states to disproportionately cut their spending on education despite the infusion of federal funds earmarked for K-12 education. As such, we request that the next package include language stipulating that in order for a state that receives stimulus aid to be granted an MOE waiver, it would be required to provide the same percentage of available revenue to education as it did in the previous fiscal year. This approach would acknowledge the fiscal realities that

states will likely face, while also protecting educational opportunities for students with the greatest need.

In addition, we ask for specific flexibility around local maintenance of effort requirements for IDEA and for Perkins CTE funding. IDEA has a 100% maintenance of effort requirement for districts. Unlike Title I, which has a 90% maintenance of effort requirement and a local waiver for districts to utilize if they are experiencing financial duress, IDEA has no flexibility to allow districts to temporarily reduce MOE during a financial or health crisis. Many districts will be unable to meet MOE requirements as intended in the FY19-20 school-year because some special education personnel are not working directly with students and instead are being redeployed to fill other critical tasks such as food preparation and delivery. Rather than require districts to pay a financial penalty as required under IDEA if they do not expend all the money on staff as intended, we believe that Congress must allow IDEA MOE for districts to be waived and for unspent resources to be carried over into the next school-year.

Similarly, many districts have chosen to utilize Perkins CTE funding for end-of-year purchases, professional development over the summer and end of course industry credentialing and testing for students. Some of these funds will not be spent as anticipated due to the pandemic. Additional flexibility is needed to allow local recipients to keep this funding so that needs are met once school resumes, professional development is rescheduled, or other purchases can be made. Providing the Secretary with the authority to waive Perkins Section 133(b) for one year would provide this needed flexibility.

The implementation of IDEA

The struggle to provide special education and related services during school-closures is the most daunting challenge facing districts and school personnel on a day without a national pandemic. Having the resources to serve these incredibly vulnerable students who already struggle to learn is AASA's top organizational priority. Districts are doing amazing work of trying to meet IDEA's more than 600 mandates during this pandemic, but that task is insurmountable in the face of a pandemic and we urge Congress to provide flexibility around several of the mandates that are most difficult for districts to meet during the pandemic.

- **Timelines:** One of the most challenging aspects of IDEA currently facing districts is the multitude of timeline requirements for evaluation, eligibility, transition and Individualized Education Program (IEP) teams under the law. Therefore, we recommend that timeline requirements be paused from the day schools closed due to the pandemic and extended for not more than 45 school days after direct, in-person instruction has resumed for the following timelines: Part C-to B Transitions, State Complaints and Due Process Complaints, annual IEP Reviews, Initial Evaluations and Triannual Reevaluations.
- **Documentation of changes to IEP during school closures:** It is not realistic to assume that every district will be able to reconvene IEP team meetings to discuss changes to the child's IEP that result from pandemic-related school closures. Therefore, we suggest that all IEPs written before schools closed be maintained. In situations where the current IEP does not sufficiently describe the services that are being provided during the pandemic, a separate, time-limited, document describing the education and service provided to the student with a disability. This document would clearly communicate the services and education provided to the student after consultation with the parent. No IEPs would need to be amended under this plan.

We also request that districts be deemed to have met their obligation to provide a free appropriate public education as long as they can demonstrate they have made reasonable and measurable efforts to meet the needs of a child with a disability and not engaged in intentional discrimination, bad faith or gross misjudgment in the provision of special education and related services to them. AASA also requests that Congress specify that the delivery of compensatory education cannot be automatically conferred to every child with a disability who, as a result of the pandemic, receives different or fewer services than is designated in their pre-COVID-19 IEP. Regardless of a child's disability or ability, it is likely that many children may make less academic progress than they would have if schools remained open and fully functional. If districts are legally bound to provide compensatory educational services to every child with an IEP, even the doubling of federal funding for IDEA over the course of the next year will not come close to reimbursing districts for the costs they will incur. Further, we already have a shortage of specialized instructional personnel in our schools and this shortage will only be exacerbated if we must double-up on services children with disabilities while our district staffing stays stagnant. With limited resources and staff we cannot redirect resources and personnel to service one population of vulnerable students at the direct cost of other vulnerable populations simply because districts have not been able to provide all the IEP services a child was entitled to during a pandemic. We ask Congress to provide flexibility around when compensatory educational services must be provided in light of a pandemic to ensure our districts can serve all students well.

Allocating Resources for Education Technology

Outside of and in addition to the fiscal stabilization fund, Congress must include \$2 billion in funding to the E-rate program. As schools and families find themselves in the never-before-found situation of wide-spread home-based learning as schools are closed, it has highlighted a long-documented and persistent inequity as it relates to access to broadband.

The E-Rate program's successful equity-based 22-year history of keeping public and private schools and public libraries connected to the internet demonstrates why it is best positioned to disseminate critical emergency funds to schools and libraries – with priority to those with the greatest need. Having committed more than \$50 billion in support to schools and libraries since its founding in 1998, the E-Rate certainly can handle processing promptly and effectively the \$2 billion in homework gap funding.

School Meal Reimbursement

We appreciate the U.S. Department of Agriculture Food and Nutrition Service's (USDA FNS) quick release of 12 nationwide waivers to the child nutrition program, as well as their decision to issue all 50 states area eligibility waivers to operate summer food sites in areas with less than 50% Free and Reduced Price Lunch (FRPL) students. These flexibilities are critical to sustaining district-level food service operations as schools face indefinite closures going into FY21.

That said, now that USDA has issued a nationwide non-congregate waiver that applies to the School Breakfast and National School Lunch Programs, many closed schools will likely be providing meals through these programs instead of switching to summer models. As such, it is critical for Congress to waive the eligibility requirements for FRPL and allow all meals to be reimbursed at the free rate. This action will enable districts to ensure that families in need who are presenting at sites for food or requesting meal delivery are able to receive meals through the child nutrition programs.

Recognize School Districts as Employers: Include Public Employers in Payroll Tax Credit

When it comes to employer subsidies, Congress must treat state and local government—including public school districts, the nation’s largest employer—in the same manner as businesses and non-profit agencies. Congress must ensure equitable treatment of state and local government agencies—including school districts—by including them in the benefits of payroll tax credit for “emergency paid leave” for our public employees affected by the coronavirus. Just like businesses and nonprofit agencies, state and local government employers, including school districts, will be providing emergency family and medical paid leave and emergency paid sick leave. Under the Family First Coronavirus Response Act, unlike businesses and nonprofit agencies, state and local government employers, including school districts, are expressly prohibited from offsetting these additional personnel costs against our employer share of Social Security payroll withholding payments [see section 7001(e)(4) and 7003(e)(4) of H.R. 6201]. Ironically, private and parochial schools, as nonprofit agencies, would financially benefit from the proposed tax credits, along with private sector businesses, while public school districts, along with other state and local government employers, would be excluded from the payroll tax credits. As school districts are the largest employer in the United States collectively, we urge Congress to remove this prohibition and allow eligibility for school districts and other units of state and local governments to receive the payroll credits. Specifically, it is imperative that state and local government agencies are included in the payroll tax credit for paid sick and family leave in Family First Coronavirus Response Act, as well as the employee retention payroll tax credit in the CARES Act.

Secure Rural Schools’ Drawdown Reduction

As rural school districts re-work their 2020-21 budgets, they not only are facing declining Secure Rural Schools program receipts but are also facing the unprecedented challenges created by the COVID-19 virus. The cost of workforce demands, crumbling physical infrastructure, increasing pressure on public safety and now, perhaps most importantly, providing adequate and responsive health care is simply crushing rural America's ability to provide these basic public services. In response to this crisis, it is time for Congress to provide much-needed financial certainty to rural communities reliant on public lands. With your leadership in December, Congress reauthorized the Secure Rural Schools (SRS) program with short term funding FY 2019 and FY 2020 retroactively to 720 counties and 4,000 school districts in 41 states. FY19 SRS payments minus a 5% reduction have been sent to counties this week. While we are grateful for this action, the temporary extension will once again rely on Congressional action (every two years) and funding for the program continues to be reduced annually by 5%. This lack of stability and annual funding cuts will severely impact the ability of rural schools to respond to the unique challenges that will be further compounded in the wake of COVID-19.

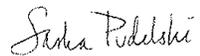
While we support the creation of a permanent endowment fund to provide reliable funding for county roads and bridges, school districts, public health and other essential services, the most immediate need related to forest counties is the eliminate the program’s mandatory 5% drawdown reduction with an FY 2009 baseline.

In conclusion, we want to express our appreciation for the flexibilities provided to districts in CARES which will make it easier for us to allocate resources appropriately and to focus on educating children instead of testing them for federal accountability purposes. We also are grateful for the initial \$13.5 billion in funding that will allow districts to continue funding hourly workers, substitutes and other school personnel and ensure that school districts, as the largest employers in many communities, are

keeping people employed. In addition to the aforementioned policy requests we have submitted here, we reiterate our continued support for the letter that we sent to Capitol Hill on April 4, co-signed by eleven other national education organizations, asking for significant, robust and flexible funding for our nation's public schools.

Thank you for your commitment to K-12 public schools and your leadership in these challenging times.

Sincerely,

A handwritten signature in cursive script that reads "Sasha Pudelski".

Sasha Pudelski
Advocacy Director