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Department of Education
Office of Elementary and Secondary Education
Document Number 2020-14224
CARES Act Rule on Equitable Services

Comments from the Union of Orthodox Jewish Congregations of America:

Pursuant to the above-referenced Notice of Proposed Rule Making and Notice of Public Hearing, the Union of Orthodox Jewish Congregations of America (OU) submits the following comments on behalf of our members and institutions *in support* of the proposed regulation concerning the distribution formula for COVID-19 relief funding for schools. The formula promulgated by the proposed regulation would enable Local Education Agencies (LEAs) to fulfil their obligations to non-public schools under the equitable services doctrine, ensure that non-public schools are able to minimize educational disruption and maintain adequate public safety standards during the Coronavirus pandemic, and prevent the closure of hundreds, if not thousands, of non-public schools due to pandemic-related financial difficulties, thus shielding public schools from the resultant flood of displaced former non-public school students into crowded public school systems across the United States.

I. Background

The Union of Orthodox Jewish Congregations of America (OU)--the nation's largest Orthodox Jewish umbrella organization-- represents nearly 1,000 synagogues across the country as well as hundreds of non-public K-12 Jewish "day schools" and yeshivot, and the thousands of families who choose to have their children educated in these schools. These schools provide our community's children with a dual curriculum comprised of the in-depth study of the Torah, Talmud, Jewish philosophy and other studies essential for rearing our children to be committed and practicing Jews; and a rigorous education in math, English, history, civics and other studies essential for rearing our children to be productive and engaged members of American society. Currently, there are more than 860 Jewish day schools across the United States educating more than 300,000 children in grades K-12.

The financial cost of operating a dual curriculum is significant and has been the American Orthodox Jewish community's greatest challenge for some time. Furthermore, while some non-public schools across the United States cater largely to the wealthy, many Jewish day schools and yeshivot have large numbers of students from low-income households. Thus, the OU worked for

to ensure that states and LEAs satisfy their equitable services obligations under the Elementary and Secondary Education Act to provide secular, neutral and nonideological services to non-public schools. Ensuring the adequate provision of these equitable services is a vital aspect of the OU's attempts to reduce the financial burden imposed on Jewish families who seek to provide their children with a Jewish education at a non-public school.

I. Support for the Proposed Regulation

The OU iterates its support for the formula proposed by the regulation, which promotes the stated purpose of the CARES Act to alleviate the impact of the pandemic on us all. The proposed regulation thus respects the long-established precedent ensuring non-public schools' participation in emergency relief funding. By ensuring non-public schools receive the funding necessary to sanitize school buildings and provide remote instruction – pandemic-related expenses for which non-public school students have equal need – the proposed formula will reduce the health risks faced by non-public school students and the population at large. We are grateful to observe that the proposed formula appreciates the considerable financial hardship and pressures experienced by non-public schools generally, and Jewish day schools and yeshivot specifically, due to the Coronavirus pandemic and recognizes how alternative provisions would trigger the closure of many non-public schools, to the detriment of their students, religious communities and public school systems overwhelmed by a mass influx of new students.

1. The Proposed Regulation Respects the Well-Established Precedent of Non-Public School Participation in Disaster Relief

Federal relief packages distributed in response to a wide range of disasters have historically recognized that such disasters affect all communities, schools, and students. These relief packages have therefore often distributed aid and equitable services differently from under the formula utilized for Title I, Part A distributions to LEAs. Examples of non-public school participation in Federal disaster relief funding include:

- January 2006: Federal assistance for non-public schools and their students affected by Hurricane Katrina, including immediate aid to defray the costs of rebuilding and re-opening non-public schools, financial incentives to non-public schools who enrolled displaced students, and tuition vouchers for parents of displaced students subsequently enrolled in non-public schools.
- February 2018: Federal assistance for non-public schools and their students affected by Hurricanes Harvey, Irma and Maria and the 2017 California wildfires, including immediate aid to defray the costs of restarting operations, re-opening and re-enrolment, and emergency impact aid to students displaced into non-public schools.
- December 2019: Federal assistance for non-public schools and their students impacted by Hurricanes Florence and Michael, Typhoon Mangkhut,

Super Typhoon Yutu and other natural disasters in 2018 and 2019, including immediate aid to defray the costs of restarting operations.

In 2018, Congress passed the Bipartisan Budget Act of 2018, P.L. 115-123, which ensured that in determining the appropriate level of services and assistance to be provided to eligible non-public school students, public agencies must consider the numbers and needs of non-public school students to be served in comparison with the numbers and needs of the eligible public school students to be served. (Previously, public agencies would simply apply the formula used for Title I, Part A LEA distributions.)

The disruption K-12 students have faced as a result of the COVID-19 pandemic is similar to the disruption students faced following other natural disasters and emergencies, such as hurricanes. Non-public school buildings and public school buildings have been forced to close for lengthy periods of time, and both face substantial reopening and restarting costs. The Equitable Services distribution formula suggested in the proposed regulation – unlike alternatives considered or advocated for, including the general Title I, Part A distribution model – recognizes both the clear precedent for substantial non-public school assistance supplied by various federal disaster relief bills that followed other natural disasters and emergencies, and their applicability to disruption caused by the Coronavirus pandemic.

2. The Proposed Regulation Recognizes that Non-Public Schools have Similar Need for, and Expenses of, Remote Instruction and Sanitation as Public Schools, Safeguarding Students and the Wider Population from COVID-19

The list of services for which CARES Act relief may be used include purchasing personal protective equipment for students and staff, sanitizing school facilities, training staff about how to minimize the spread of infectious diseases, purchasing technology to enable remote instruction, and providing mental health support. All schools – public and nonpublic – will need to internalize such costs. Failure to do so would not only maximize educational disruption while schools remain shut, but also increase the likelihood of students' exposure to the virus once they reopen. Should non-public schools reopen without the necessary funding to do so safely, then the health of non-public school students will be put at risk. Furthermore, the virus has demonstrated the connection among the health outcomes of all strands of society. Tolerating low sanitary standards in non-public schools puts the rest of society at risk.

3. The Proposed Regulation Appreciates How Non-Public Schools, in Particular Jewish Day Schools and Yeshivot, Have Suffered and Are Suffering Considerable Financial Hardship and Pressures Due to the COVID-19 Pandemic and the Resultant Economic Downturn

Given the concentration of Jewish communities across many of the hardest hit cities in the United States, including New York City, our communities have been hit hard by the death and disruption wrought by the virus. Jewish day schools and yeshivot

were amongst the first schools to close nationwide, thus experiencing longer than average periods of disruption.

The economic picture faced by our communities, its schools, and their families is not yet entirely clear. However, it is certain that many of our schools will experience profound financial issues over the coming year and beyond. Our day schools and yeshivot strive to operate as needs-blind institutions, ensuring that all families in our communities--regardless of their financial situation-- are able to send their children to Jewish schools, should they wish to do so. That philanthropic approach, however, relies on the receipt of substantial charitable donations from those able to give and tuition payments from those able to pay. Already, many day schools and yeshivot have reported considerable reductions in tuition collection and scholarship donations as well as a sharp rise in requests for financial aid. These troubling developments, combined with the significant additional costs of re-opening and running a school in a safe manner during a pandemic, leave many Jewish day schools and yeshivot on the precipice of financial collapse and closure should they not receive adequate governmental support.

4. The Proposed Regulation Understands How the Closure of Many Non-Public Schools Would be Detrimental to Students, Religious Communities, and Public School Systems

The potential closure of non-public schools, including Jewish day schools and yeshivot, would be a profound policy failure in a number of ways. First and foremost, it would be devastating for the children attending those schools forced to close, who, having already faced an unprecedented level of disruption to their education and lives over the past few months, would face further educational dislocation and displacement. The level of educational disruption experienced by schoolchildren has been a tragedy and one that could setback by several years the development of many children – the Department of Education has a duty to mitigate the impact of that disruption by not adding to it unnecessarily. An inequitable distribution of services threatens the closure of non-public schools, in turn unleashing yet further disruption to students' education and development. The Department of Education's proposed distribution formula would prevent or minimize that unnecessary, additional disruption.

The potential closure of many Jewish day schools and yeshivot as a result of the economic damage wrought by the Coronavirus pandemic and the inadequate and inequitable distribution of the services needed to weather it would have a profound and detrimental impact on the American Jewish Community. Repeated studies conclude that enrollment in a Jewish day school or yeshiva is the single most significant factor in determining future engagement with Judaism. Standing by as Jewish day schools and yeshivot across the country collapse in part due to inadequate governmental support would leave many parents less able to ensure their children's future engagement with Judaism.

Finally, the potential closure of many Jewish day schools and yeshivot (and other non-public schools) would have a profound and detrimental impact on public school systems across the United States. Closures would necessitate an influx of formerly non-public school students into public school systems that are already overwhelmed by the educational disruption wrought by COVID-19. Non-public school closures would disproportionately flood the classrooms of the most vulnerable school districts with students whom they are unable to accommodate. Jewish Day Schools and Yeshivot are disproportionately located in many of these areas; for example, one-third of Jewish non-public school students nationwide attend schools in New York City, comprising over 8% of all K-12 enrollment in New York City. Should some of these schools be forced to shut due to pandemic-related financial problems, the New York City public school system would be forced to pick up the enrollment.

The threat of the collapse of non-public schools is not merely a prospective negative policy outcome: already 76 schools – including four schools for students with disabilities and one Jewish school – with a combined enrollment of almost 10,000 students, have announced permanent closures. Those numbers are likely to increase over the summer and have accelerated in recent weeks. Should adequate and equitable services not be distributed to non-public schools, the closures of these schools will be considerable, producing a profound and detrimental effect for students, religious communities, and public school systems and students. We are grateful that the Department of Education—in its rationale for proposing this distribution formula recognizes the fact that non-public schools relieve the financial strain imposed on public school systems.

II. Conclusion

The Orthodox Union reiterates its support for the proposed regulation concerning the distribution formula for COVID-19 relief funds for schools. The proposed regulation would enable Local Education Agencies (LEAs) to fulfil their obligations to non-public schools under the equitable services doctrine, ensure that non-public schools are able to minimize educational disruption and maintain adequate public safety standards during the Coronavirus pandemic, and prevent the closure of hundreds, if not thousands, of non-public schools due to pandemic-related financial difficulties.

