



To: U.S. Department of Education, Office of Elementary and Secondary Education, Department of Education

From: Southern Education Foundation

Date: July 31, 2019

Re: Docket ID ED-2018-OESE-0106: Title I--Improving the Academic Achievement of the Disadvantaged and General Provisions; Technical Amendments requests for comments as described in the notice

The Southern Education Foundation (SEF), a 152-year old civil rights organization advocating for low-income students and students of color in the South, appreciates the opportunity to provide comments to the United States Department of Education (ED) regarding “technical” regulatory changes that formerly prohibited religious schools from receiving federal funding to provide equitable services to Title I students. Published as new regulations, the changes read, “The Department, in consultation with the U.S. Department of Justice, has determined that the statutory provision in ESEA section 1117(d)(2)(B) and a similar provision in ESEA section 8501(d)(2)(B) requiring an equitable services provider be ‘independent of...any religious organization’ are unconstitutional because they categorically exclude religious organizations (or affiliated persons) based solely on their religious identity from providing equitable services.” As a result, the proposed new regulations allow any Local Education Association to enter into a third-party contract with a religious organization to provide equitable services on the same basis as any other approved entity.

Unlike ED, we believe this is a substantive rather than a technical change to current law and should undergo an official notice and comment period. Lifting the prohibition on religious schools would allow a church, or any other religious entity, to provide afterschool services and receive Title I funding. Federal law still requires the services to be secular, neutral, and non-ideological; under this change, however, religious organizations may provide direct services, such as tutoring and mentoring, and receive federal funding to do so. If ED removes the existing prohibition concerning religious schools’ participation in equitable services, the new system would allow more public funding to be funneled to private schools, which is in direct contradiction of the current prohibition in the Every Student Succeeds Act (ESSA).

ED grounds the proposed prohibition change in the Supreme Court decision of *Trinity Lutheran Church of Columbia, Inc. v. Comer (Trinity)*, but in doing so, interprets that decision to be much broader than what was intended. Under *Trinity*, the church sought government funding to repave their playground, and the Court ruled that their religious standing should not preclude them from receiving a government benefit. Interpreting *Trinity* as a ruling granting religious organizations the right to contracts to provide equitable services with public funding is a much broader interpretation than even the Court intended.

SEF also intrinsically opposes any measure that finances private schools with public funds. Any such effort would eliminate or reduce public accountability for students and taxpayers as religious and other private schools do not face the same requirements as traditional public schools related to state-approved academic accountability, publicly reported budgets, or performance outcomes. Also, the use of public

funds to support private schools is inefficient as it forces governments to spread limited taxpayer resources into two school systems—one public and one private—the latter of which is not accountable to taxpayers.

SEF fundamentally believes private schools should be prohibited from providing equitable services with federal funding and would urge ED to maintain current law excluding religious schools from receiving federal funding for equitable services. We again thank you for the opportunity to comment. Please contact us if additional information would be useful.

Sincerely,

Southern Education Foundation