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**CAPE member
organizations:**

Agudath Israel
of America

American Montessori
Society

Association Montessori
International–USA

Association of Christian
Teachers and Schools

Association of Christian
Schools International

Association of Waldorf
Schools of N.A.

Christian Schools
International

Council of Islamic Schools
in North America

Council on Educational
Standards and
Accountability

Evangelical Lutheran
Church in America

Friends Council
on Education

Jesuit Schools Network

Lutheran Church–
Missouri Synod

National Association of
Episcopal Schools

National Association of
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National Catholic
Educational Association

National Christian
School Association

Oral Roberts University
Educational Fellowship

Seventh-day Adventist
Board of Education

United States Conference
of Catholic Bishops

Wisconsin Evangelical
Lutheran Synod Schools

Affiliated State
Organizations

September 20, 2017

(Submitted via Federal eRulemaking Portal)

Hilary Malawer, Assistant General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, SW, Room 6E231
Washington, DC 20202

Re: Evaluation of Existing Regulations – Docket ID: ED–2017–OS–0074

Dear Ms. Malawer:

The Council for American Private Education (CAPE) welcomes the opportunity to respond to the call in the Federal Register (82 Fed. Reg. 28431) for input on education regulations that may be appropriate for repeal, replacement, or modification. We offer the following comments.

1. Retain and Consolidate

Over the years, the U. S. Department of Education has issued regulations and guidance documents relating to requirements in education statutes concerning the provision of equitable services to students and teachers in private schools. The most recent example is *Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements Under the Elementary and Secondary Education Act of 1965 (ESEA), as Amended by the Every Student Succeeds Act (ESSA)*. This collection of regulations and guidance has been extraordinarily helpful in ensuring that private school students and teachers receive the services to which they are entitled under federal law, and in addressing actual questions that have arisen in connection with the interpretation and implementation of these provisions. *We strongly urge that these regulations and guidance documents be retained.*

In addition, *we strongly recommend that these documents be consolidated into a single reference source relating to equitable services*. The most recent guidance referenced above contains numerous cross references to previously published documents that provide a confusing mix of provisions. By updating and combining these documents into a single streamlined source, the Department would be serving the education community, both public and private, with a convenient reference tool while also achieving its goal of eliminating multiple overlapping and outdated documents. Documents that should be considered for update and consolidation include, but are not limited to:

- *Non-Regulatory Guidance: Fiscal Changes and Equitable Services Requirements Under the Elementary and Secondary Education Act of 1965* (2016)
- *Title I Services to Eligible Private School Children Non-Regulatory Guidance* (2003)
- *Ensuring Equitable Services to Private School Children: A Title I Resource Tool Kit* (2006)
- *Title IX, Part E Uniform Provisions, Subpart I—Private Schools* (2009)
- *Community Eligibility Provision and Selected Requirements Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended* (2014)
- Title I regulations relating to the participation of eligible children in private schools
- IDEA regulations relating to children with disabilities enrolled by their parents in private schools

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- Equitable services sections contained within any regulations or guidance documents issued by the Department, including, for example, *Improving Teacher Quality State Grants, ESEA Title II, Part A, Non-Regulatory Guidance* (2006).

2. State Plans

Regulations and guidance governing the submission of state plans under ESEA should require states to identify how they will monitor and enforce compliance by local educational agencies with the equitable services provisions in the statute. Regulations and guidance should also require that states include in their plans an explanation of how the ombudsman, who is charged with monitoring and enforcing compliance with equitable services requirements by school districts, will carry out those responsibilities.

3. Monitoring

In addition to issuing regulations and guidance, the Department has the responsibility to ensure that states and school districts comply with those requirements. The Department's own monitoring makes clear that compliance with equitable services provisions is sometimes spotty. Indeed, CAPE's current monitoring of the implementation of the ombudsman provision in ESEA reveals a rather mixed state of affairs. Rigorous monitoring by the Department must take place, and cases of noncompliance must be addressed quickly and decisively.

By way of background, the Council for American Private Education (CAPE) is a coalition of 21 national organizations (listed on p. 1) and 38 state affiliates serving private elementary and secondary schools. There are 34,576 private schools in the United States; one in four of the nation's schools is a private school. About 5.3 million students (10 percent of all PK-12 students) attend them. CAPE member organizations represent about 80 percent of private school enrollment nationwide.

Thank you for considering our comments. The CAPE community stands ready to assist with their interpretation, clarification, or implementation.

Respectfully submitted,



Joe McTighe
Executive Director