



California sues Betsy DeVos over rule steering coronavirus aid to private schools

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California is leading a multi-state lawsuit challenging U.S. Secretary of Education Betsy DeVos' ruling that orders states to share federal coronavirus relief with private schools.

Attorney General Xavier Becerra called it “the Trump administration’s latest effort to steal from working families to give it to the very privileged” in a press conference Tuesday that coincided with the filing of a 45-page lawsuit in U.S. District Court for Northern California in Sacramento.

Attorney generals from Michigan, Maine, New Mexico, Wisconsin and Washington, D.C., joined the lawsuit. It is the latest skirmish over what Congress intended when it passed \$13 billion in aid for school districts in March as part of the \$2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act.

California’s K-12 share of the \$13 billion is \$1.65 billion. Congress directed that the money be distributed to the nation’s low-income districts, through the federal Title I formula for determining student poverty. At issue is how much flexibility districts would have in coping with the effects of the pandemic and how much of the funding would be made available to private schools.

“The virus does not differentiate between students, and there should not be distinctions between sectors of schools in a health crisis,” said Ron Reynolds, executive director of the California Association of Private School Organizations.

A number of private schools, particularly those run by Catholic dioceses, “have been taking a big hit” from the coronavirus, he said, and are struggling to remain open. These schools already receive federal funding through Title I to serve low-income students, Reynolds added.

“Private schools that cease to exist will just create an added burden for public schools,” he said.

Organizations representing school districts and Becerra charged DeVos and President Trump with subverting Congress’ intent to push her agenda of promoting private schools and school choice. Federal subsidies for them would be at the expense of poor kids in public schools, they assert.

“The Trump administration is creating a process that could unlawfully take tens of millions of dollars away from low-income public schools and diverted to these private schools,” Becerra

said, including schools with “tuition as much as a kid that you would send off to a private university.”

Some of those schools offer scholarships to low-income students. And, as the lawsuit itself acknowledges, the contrast is actually not as stark as the power grab that Becerra and State Superintendent of Public Instruction Tony Thurmond characterized at the press conference.

Low-income students in private schools by law are entitled to Title I money for “equitable services,” such as transportation and tutoring. School districts receive Title I funding based on all children in poverty, including those who go to private schools.

Neither the Council of Chief State School Officers, which represents state superintendents, nor the state attorneys general deny that Congress intended that the CARES Act help private schools with poor kids, too. The lawsuit doesn’t dispute that point either, Becerra’s press office wrote in an email. The attorneys general argue that DeVos’ plan to fund private schools and impose restrictions on public schools’ use of the money would exceed what Congress wanted.

Acknowledging that the pandemic was a crisis affecting all students, Congress permitted districts to use the funding not just on schools where poverty is concentrated but on all public schools, to provide technology, school lunches and health protections and other uses. In California, about 6,600 of the state’s approximately 11,300 district and charter schools receive Title I funding.

Since all private schools also faced a crisis, DeVos, in turn, initially said that CARES Act funding should be based on private schools’ total enrollment, not just that of poor kids

That position, which would have steered a much bigger piece of the \$13 billion to private schools, angered not only Democrats in the U.S. Senate but also the leading Republican who wrote the CARES Act, Sen. Lamar Alexander, R-TN, chairman of the Senate Health, Education, Labor and Pensions Committee. He threatened to amend the law to overturn DeVos’ interpretation.

Last month, DeVos retreated by issuing a new “interim final rule” that the new lawsuit would block. In it, DeVos gives states two options that she said would benefit “all American students, teachers, and families impacted by coronavirus.” Under one, states would use private schools’ total enrollment to determine its share of a district’s funding. The other option would fund only low-income private school students, while also restricting CARES Act funding to low-income Title I-designated public schools, not to all schools.

To DeVos, this compromise creates parity for low-income schools. To the attorneys general, DeVos’ compromise offers “an untenable choice.” One option is no different from what DeVos proposed in her initial guidance violating the law. The second option offers two “poison pills.” It would prohibit districts from using federal aid on non-Title I designated schools where there are also many low-income students. And it would place undue restrictions on how Title I schools can use the money, the lawsuit said

Becerra said that low-income public school students would lose out under DeVos’s plan. Her ruling “creates a false choice where school districts must include private schools on the basis of their total population, or be forced to jump through unnecessary, complicated hoops, to do what Congress intended – to make sure the funds get to schools that are hurting the most.”

“Whether it’s President Trump or Secretary DeVos, we won’t stand by the education of our children and the rule of law are under threat,” he said.

To date, 77 private schools nationwide, including 62 Catholic schools, have closed since the start of the pandemic, according to the libertarian Cato Institute, which is tracking school closures. The average tuition of those schools was \$7,380.

This week, St. Cornelius Catholic School in Richmond, serving 140 students, became the latest to join list, due to declining enrollment.

In the new state budget, Gov. Gavin Newsom and the Legislature directed an additional \$5 billion in CARES funding to districts to address students’ learning loss. DeVos’ ruling on private schools and the lawsuit doesn’t affect this larger funding.