

## Judge grants preliminary injunction against DeVos rule in COVID-19 school funding lawsuit

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August 27, 2020

A federal judge Wednesday **granted** a preliminary injunction to pause a rule from U.S. Department of Education (DOE) Secretary Betsy DeVos regarding how to split federal COVID-19 funding between public and private schools.

Michigan Attorney General Dana Nessel claimed DeVos's rule misinterprets the Coronavirus Aid, Relief and Economic Security (CARES) Act language and would "siphon" \$21 million from public schools to private schools in the state.

The attorneys general of six states joined Nessel and California Attorney General Xavier Becerra in the challenge.

Judge James Donato of the U.S. District Court Northern District of California wrote that Michigan and other states are likely to succeed on the merits because the intent of the language Congress used is "plain as day" requiring fund distribution based on the proportion of low-income students instead of the total population.

"This is 'interpretive jiggery-pokery' in the extreme," Donato wrote of the DOE's reasoning.

The preliminary injunction prohibits the DOE from enforcing its rule until a further decision is reached.

"We are pleased with the Court's decision and will continue to fight against the unlawful approach taken by Secretary DeVos to redirect pandemic relief money from public schools to serve her own political agenda," Nessel said in a statement.

A libertarian-leaning Cato Institute **tracker** found 118 private schools have already closed permanently nationwide and estimated switching 18,000 private school students to public schools would cost taxpayers about \$283 million.

Great Lakes Education Project Executive Director Beth DeShone opposed the ruling, partly because Whitmer ordered all public and private schools shut in March.

"The COVID-19 pandemic doesn't discriminate. Governor Whitmer didn't discriminate which types of schools she closed in the Spring," DeShone said. "Attorney General Nessel should stop discriminating against some students just because their parents chose a certain school to attend."

Gov. Gretchen Whitmer said the action is "good news for our kids, our educators and families in districts who need this funding most."

Donato noted the state planned to reserve about \$5.1 million in Elementary and Secondary School Emergency Relief (ESSER) funds for private schools and detailed cuts public schools would otherwise have to make.

“Losing [nearly \$16.5 million] of federal funding to private schools would be the equivalent of laying off 466 teachers from public schools in Flint, Michigan,” Donato wrote.

He wrote that as much as 33 percent of Grand Rapids’ total ESSER funding could be sent to private schools under one rule option.

It’s unclear how that change could affect taxpayers.