

Judge strikes down DeVos plan to boost pandemic relief for private schools

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A federal judge on Friday ruled that Education Secretary Betsy DeVos' effort to boost the amount of emergency pandemic relief that flows to private school students is illegal and struck down the policy.

U.S. District Judge Dabney Friedrich, an appointee of President Donald Trump, ruled that DeVos ran afoul of the CARES Act when she required public schools to send a greater share of pandemic assistance to private school students than is typically required under federal law.

The judge sided with the NAACP, which had brought the legal challenge against DeVos' policy, criticizing it as a ploy to divert emergency aid away from needy public schools toward more affluent private-school students.

Several other judges had already preliminarily blocked DeVos' rule in certain states, but Judge Friedrich's ruling — which is final — goes further in striking down the entire rule as illegal. The ruling will apply nationwide.

Friedrich ruled that DeVos lacked the authority to add her own conditions on the \$13 billion that Congress set aside for K-12 schools in the CARES Act. The restrictions applied to another \$3 billion pot of money in the law controlled by governors, to the extent they chose to spend it on K-12 schools.

At issue in the cases is how public school districts must share those billions of dollars in coronavirus relief funding with private schools to provide "equitable services" — such as technology, tutoring or transportation.

Public school officials and groups like the NAACP argued the emergency funding should be sent to private schools under the typical federal formula, which is based on the number of low-income students at private schools. But DeVos' rule said that school districts must allocate money for private school students based on total enrollment, irrespective of the students' income.

The rule also gives public schools a second option, allowing them to only fund low-income students at private schools — but only if the public schools use their own funding exclusively on low-income students in public schools. The goal, the Trump administration said, was to treat all students, across public and private schools equally.

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But in her 13-page decision on Friday, Friedrich ruled that DeVos had it wrong, writing that “Congress expressed a clear and unambiguous preference for apportioning funding to private schools based on the number of children from low-income families.”

The judge added that it was “difficult to imagine how Congress could have been clearer” in explaining how it wanted the funding distributed under the CARES Act, rejecting DeVos’ argument that there was an ambiguity in the law that she should could clarify with her own policy.

Education groups, teachers unions, civil rights organizations and some GOP education officials have expressed concerns about the administration’s approach to distributing the pandemic assistance.

But DeVos has defended her strategy as a way to treat students equitably regardless of the type of school they attend. Some advocates for private schools have also pointed out that they’ve been hard hit by the pandemic, too. The Cato Institute, for instance, has tracked more than 100 private schools, mostly Catholic schools, that have permanently closed.

Public school advocates and congressional Democrats, meanwhile, argue that private schools have access to funding that cash-strapped districts don’t. They’ve seized on reports in recent weeks, for instance, that show that private schools as well as public charter schools received billions of dollars in PPP small business loans — which school districts were unable to access.

The Education Department did not immediately respond to a request for comment on the decision.

The plaintiffs in the case, which included the NAACP — as well as individual public school parents and districts across the country — praised the ruling.

“This decision sends a clear signal that Secretary DeVos cannot use illegal means to advance her agenda of funneling scarce public resources to private education, to the detriment of our highest need students in public schools across the country,” said Tamerlin Godley, a partner at Munger, Tolles & Olson LLP, who represented the plaintiffs along with the Education Law Center and the Southern Poverty Law Center.

The ruling on the K-12 funding under the CARES Act, which was passed in March at the beginning of the coronavirus pandemic, also comes as Congress is again debating how to divvy up funding among public and private schools in the next coronavirus relief package.

The White House and DeVos have called for more aid funding to flow to private schools, especially as some of them reopen while their public counterparts remain largely virtual this fall.

Senate Republicans included in their GOP stimulus bill earlier this summer a requirement that 10 percent of the new \$105 billion in relief money proposed for K-12 schools flow to private schools. Democrats have blasted those plans as non-starters, accusing Republicans of seeking to privatize public education, and the conflict has emerged as a sticking point in the next round of relief.