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Equitable Services Rule Withdrawn

This article is an update on the hot button issue of equitable services as it relates to the CARES Act. In a nutshell, Secretary DeVos's guidance (and interim rule) have been gutted by multiple court decisions and USED itself has announced that the interim final rule is no longer in effect.

Background:

Through the spring and early summer, AESA was engaged in an effort to oppose a flawed interpretation of the equitable services provision within the CARES Act. As a reminder, on July 1 Sec. DeVos doubled down on her interpretation of the equitable services guidance from April and released a final interim rule that would codify the guidance with the strength of law. DeVos used the long-standing equitable services mechanism as a money grab to bolster private school coffers, when historically, the equitable services provisions have been focused on ensuring Title I eligible students in private schools are served.

Update:

In late summer, a trio of combo punch of court decisions out of Washington, California, and Washington D.C. took significant momentum out of the flawed rule: A federal judge in Washington state blocked the DeVos rule, a move that prevents it from being implemented in schools in Washington state. Three days later, a judge in California issued a similar injunction, preventing DeVos from implementing or enforcing her rule in at least eight states and some of the nation's largest public school districts. The California decision prevents DeVos from carrying out her policy in Michigan, California, Hawaii, Maine, Maryland, New Mexico, Pennsylvania, Wisconsin, the District of Columbia as well as for public school districts in New York City, Chicago, Cleveland and San Francisco. The Washington DC decision resulted in an opinion and order that vacated the interim final rule; consequently, the rule is no longer in effect.

Collectively, these decisions are a win for equity and for common sense policy and implementation of a statute as intended. Moving forward, state, and local education agencies are free to implement equitable services as they always have, and as Congress intended in the CARES Act. The Trump

administration may consider an appeal, but that is irrelevant for now, and schools can and should move forward with the implementation of CARES as written in law.

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