Federal district court in California issues a preliminary injunction prohibiting the U.S. Dep't of ED from enforcing its interim final rule allocating CARES Act COVID-19 relief funds to private schools

State of Michigan, et. al. v. DeVos, No. 20-04478 (N.D. Cal. Aug. 25, 2020)

Abstract: The U.S. District Court for the Northern District of California has issued a preliminary injunction in favor of plaintiff states and local school districts (Michigan, California, Maine, New Mexico, Wisconsin, Pennsylvania, Maryland, Hawaii and the District of Columbia, as well as for public school districts in New York City, Chicago, San Francisco and Cleveland) prohibiting the U.S. Department of Education (ED) from implementing its Interim Final Rule, which directs states to allocate special funding Congress designated to help schools handle the Coronavirus pandemic to private schools based on the total enrollment of such schools. The court held that the plaintiffs have shown "a likelihood of success on the merits by demonstrating that the Rule is likely to be held an unlawful administrative action under the [Administrative Procedure Act] [APA]."

Facts/Issues: Plaintiffs, the States of Michigan, California, Hawaii, Maine, Maryland, New Mexico, Pennsylvania, and Wisconsin; the District of Columbia; and the New York City Department of Education, Chicago Public Schools, the Cleveland Municipal School District Board of Education, and the San Francisco Unified School District, assert six legal claims against the U.S. Department of Education (ED) and Secretary of Education Betsy DeVos (DeVos), for violation of the separation of powers principles; ultra vires action; violation of the Spending Clause, Article I, Section 8, Clause 1 of the United States Constitution; and three separate violations of the Administrative Procedure Act, 5 U.S.C. § 706 (2012). On July 20, 2020, plaintiffs moved for a preliminary injunction barring enforcement of the Rule. The Department opposed the request for injunctive relief. The Court heard oral argument on the motion on August 18, 2020.

ED stated that the Rule was intended to resolve "a critical ambiguity" in Section 18005(a), 85 Fed Reg. at 39479. In the Department's view, the "context" of the CARES Act was the harm inflicted on "all of our Nation's students" by the pandemic. (emphasis in original). A "mechanistic application" of the share formula in Section 1117 would award funds to private schools based only on their low-income students, and not all their students.

ED believes that the use of the formula in Section 1117 would be inconsistent with the concern for all students implicit in the CARES Act, it concluded that "the phrase 'in the same manner as provided under section 1117' does not simply mean 'as provided under section 1117.'" ED also noted certain consultation and funding control terms overlapped in Section 18005(a) and Section 1117, which it saw as another indication that "in the same manner" meant something other than what those words would ordinarily denote.

ED invoked "our interpretive authority under *Chevron U.S.A., Inc., v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984)," to implement a different share formula to govern the distribution of funds to private schools. The Rule presented LEAs with two options. Under the first option, LEAs could use the low-income student formula in Section 1117, but only if they limited CARES Act funding to public and private schools that were already participating in Title I funding. School districts could not use CARES Act funding for district-wide measures that would also benefit schools not participating in Title I funding. LEAs would

also have to comply with "supplement-not-supplant" requirements, meaning they could not use CARES Act funding to replace or exceed state and local funding allocations.

The second option would allow LEAs to avoid these limitations but only if they followed the method in the Department's Guidance and shared funds with private schools based on the total number of students enrolled, and not on the total number of low-income students attending private schools.

Ruling/Rationale: The district court granted the plaintiffs' motion for a preliminary injunction barring enforcement of ED's Rule. The court began with an analysis of the APA claim addressing whether the plaintiffs had shown a likelihood of success on the merits by demonstrating that the Rule is likely to be held an unlawful administrative action under the APA.

In response to the plaintiffs' contention that "the Rule is substantively unlawful under Sections 706(2)(A) and (C) because it is 'not in accordance with' Congress's mandate to allocate GEER and ESSER funds to non-public schools 'in the same manner' as in Section 1117 of the ESEA, and so is necessarily 'in excess of statutory jurisdiction, authority, or limitations,'" the district court said, "[t]he point is well taken." It found that "Congress's intent in Section 18005(a) is plain as day," adding, "Congress expressly directed local educational entities such as plaintiffs 'to provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools.'"

The court emphasized that "[t]he statute's quintessentially plain language, and the 'surgical precision' with which Congress incorporated Section 1117 into Section 18005(a), leave no room for any other reading." It rejected ED's interpretation that "'the phrase 'in the same manner as provided under section 1117' does not simply mean 'as provided under section 1117.'" It commented, "This is 'interpretive jiggery-pokery' in the extreme."

The district court also determined that ED's rule was not entitled to deference under the *Chevron* doctrine. It stated:

The problem for the Department is that it cannot make it past step one, which asks whether the statute is ambiguous. When Congress has spoken clearly, as it did in Section 18005(a), "that is the end of the matter." An executive agency like the Department has no authority to rewrite Congress's plain and unambiguous commands under the guise of interpretation, and no deference is owed when an agency acts in contravention of a statute.

Regarding ED's reliance on *King v. Burwell,* 576 U.S. 473, 510 (2015), the court found that allowing "agencies the freedom to disregard Congress's words based on the gestalt of a statute" misplaced. It responded that "[n]othing in *King* supports such a radical revision of administrative law."

The court pointed out: "The Department's argument departs from *King* at virtually every turn. The Department did not present a detailed analysis of the overall structure of the CARES Act to support its conclusion about Congress's intent." It concluded: "The Department may prefer to give CARES Act funds to private schools more generously than Congress provided, but it is Congress who makes the law, and an agency has no power to 'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms."

The court further found that ED's other arguments "in defense of the Rule are equally unavailing." It noted ED's "reliance on a general delegation of discretion to implement the

Education Code also is misplaced." It noted ED "overlooks the fact that Section 18005(a) is a formula grant that does not allow for agency modifications." It stressed: "Because Congress set the exact formula for the expenditures on nonpublic schools by incorporating Section 1117, the Department had no authority to impose its own conditions."

As a result, the district court held that "the plaintiffs have established that they are likely to prevail on their claim that the Rule must be set aside under Sections 706(2)(A) and (C) of the APA." It added, "They have also established that there was no ambiguity in Section 18005(a) for the Department to fill in, and so its sole duty was to 'give effect to the unambiguously expressed intent of Congress.'" Consequently, the court said, "The Court need not take up plaintiffs' other contentions with respect to whether the Department provided an adequate period of notice and comment before promulgating the Rule, or acted arbitrarily and capriciously in ignoring evidence about the Rule's impacts. The Court also declines at this time to reach the constitutional argument plaintiffs assert under the Spending Clause."

Finally, the court determined that the irreparable harm, balance of hardships and the public interest weighed in the plaintiffs' favor.

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