

# **AG Kaul: Secures early court victory against Trump administration attack on pandemic relief funds for public schools**

Posted on Thursday, Aug 27, 2020

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MADISON, Wis. – Attorney General Josh Kaul today announced that he and eight other attorneys general and several school districts secured a preliminary injunction yesterday against U.S. Department of Education Secretary Betsy DeVos’ unlawful attempt to siphon pandemic relief funds away from K-12 public schools. In reaching the decision, the court held that Secretary DeVos likely undermined Congressional intent by unlawfully reinterpreting the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), threatening efforts to ensure that school districts have the flexibility they need to tackle the challenges of COVID-19.

“This decision is a big win on the path to ensuring that our public schools receive all of the funding that Congress intended to provide to them for pandemic relief,” said Attorney General Kaul.

On March 27, 2020, Congress enacted the CARES Act in response to the ongoing pandemic and its impacts across the country. Under the act, Secretary DeVos is required to allocate funding to help schools prevent, prepare for, and respond to COVID-19. Specifically, the Act, among other things, requires the Trump Administration to distribute billions of dollars in aid through the Elementary and Secondary School Emergency Relief Fund and the Governor’s Emergency Education Relief Fund to K-12 schools across the country — with more than \$4 million slated for public schools in Wisconsin from the combined funds. While the CARES Act provided local authorities with critical flexibility in using these resources, it also established that private schools are only eligible for funds in certain

circumstances in line with established criteria under Title I of the Elementary and Secondary Education Act of 1965. However, in direct contravention of Congressional intent, the U.S. Department of Education's guidance and interim final rule blows up the legislated mechanism by effectively requiring the inclusion of private schools based on the total population they serve, leaving the poorest school districts with less.

In the decision, the court noted:

- Congress' intent in the CARES Act was "plain as day" that funds must be distributed based on the proportion of low-income students and not total population;
- The U.S. Department of Education's interpretation of the CARES Act was "interpretive jiggery-pokery' in the extreme;"
- Plaintiffs clearly demonstrated a likelihood of irreparable harm and that the U.S. Department of Education did not meaningfully dispute that assertion; and
- The balance of hardships weighs in plaintiffs favor, particularly in light of the fact that private schools have had access to additional funding under the Paycheck Protection Program.

In [filing for a preliminary injunction](#), Attorney General Kaul was joined by the attorneys general of California, Hawaii, Maine, Maryland, Michigan, New Mexico, Pennsylvania, and the District of Columbia, as well as the City School District for the City of New York, Chicago Board of Education, Cleveland Municipal School District Board of Education, and the San Francisco Unified School District.

A copy of the court's decision is available [here](#).