

U.S. Department of Education Finds ESEA Restriction on Religious Organizations Unconstitutional, Will No Longer Enforce

On March 11, 2019, U.S. Secretary of Education Betsy DeVos announced that the Department would no longer enforce the restriction barring religious organizations from serving as contract providers of equitable services solely due to their religious affiliation.

The U.S. Department of Education, in consultation with the U.S. Department of Justice, determined the statutory provisions in Section 1117(d)(2)(B) and 8501(d)(2)(B) of the Elementary and Secondary Education Act (ESEA) that require an equitable services provider to “be independent of ... any religious organization” are unconstitutional because they categorically exclude religious organizations based solely on their religious identity.

These provisions run counter to the U.S. Supreme Court decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) that, under the Free Exercise Clause of the First Amendment of the U.S. Constitution, otherwise eligible recipients cannot be disqualified from a public benefit solely because of their religious character.

Trinity Lutheran Church wanted to participate in a state program that provided rubber mulch for playgrounds for preschools throughout the state of Missouri. However, they were denied from the program, solely because they were a religious organization. The U.S. Supreme Court said that if the state was providing mulch, it must go to all preschools whether religious or not.

Here the Department is saying that if a school is wanting to use a vendor to provide professional development services, the district can contract with now a religious organization.

The Department will continue to enforce all other applicable provisions of federal law. In particular, under ESEA Sections 1117(a)(2) and 8501(a)(2), school districts must continue to ensure that any contractor is independent of the private school for which it is providing services and that the educational services and other benefits being provided by the contractor are “secular, neutral and non-ideological.”

What does this mean for Christian Schools?

Under equitable services, Christian Schools can use Title IIA to provide professional development to teachers and administrators. Therefore, the Christian School may request that ACSI be the vendor of these services and the district may now contract with ACSI as a religious organization. Christian schools could also request the vendor to be a Christian College or University that provides professional development services such as CEUs. However, the professional development must be for areas that are secular, neutral and non-ideological in nature. So, the topic could be math, history, reading, classroom management and such. It just cannot be Bible or biblical integration.

Third, under Title I, “at-risk” students may need some additional supplemental services such as tutoring after school. The district could now contract with a teacher that works for a religious school as long as it is not during a time when they are being paid by the school. They must be independent from the school such as tutoring services after school hours.

ACSI would recommend that during the consultation phase with your Local Education Agency (LEA), you discuss this with them. You may want to share with your LEA, the [Fact Sheet](#) provided by the U.S. Department of Education.

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