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"Nothing is more dreaded than the national government meddling with religion."
John Adams, in a letter to Benjamin Rush, 1812

U.S. Department of Education Publishes Guidance for Equitable Services

The U.S. Department of Education published a guidance document to provide explanation and clarity for the equitable services that are available for private school students and educators through the Elementary and Secondary Education Act (ESEA). The *ESEA Title VIII Equitable Services Non-Regulatory Guidance* explains that "since the initial passage of the Elementary and Secondary Education Act of 1965 (ESEA), private school children and educators have been eligible to participate in certain ESEA programs," such as those designed to aid special needs students and low-income students. Because this recently published guidance is non-regulatory, it is simply intended to offer clarification for state and local education agencies, as well as private school officials, as to the procedures and responsibilities of education officials in ensuring the smooth provision of equitable services. Areas addressed in the guidance include the consultation process between the local education agency (LEA) and private school officials, the allotment of funds for the services, the opportunities available for educators, the role of the ombudsman in monitoring the equitable services, and the general rules for the equitable services that are provided. These general rules include the stipulations that any service delivered through these programs must be "secular, neutral, and non-ideological," and that the services are intended to "supplement, not supplant" the general education being provided by the private school. The guidance also offered an explanation as to the areas in ESEA where equitable services are available, including Title I students (low-income families and migratory children), some Title II programs (professional development and training for educators), Title III (English language learners), and some Title IV programs (21st Century Community Learning Centers and SERV which helps those affected by a natural disaster or other traumatic crisis.) Of interest to states that have recently expanded school choice opportunities is the statement that clarifies that students who participate in a school choice program can still be eligible for equitable services, "regardless of the source of funds paying the private school child's tuition."

The Department of Education released a draft version of this guidance in 2022, and AACS was one of 30 organizations and individuals that submitted public comments on the draft. A main point of the AACS comments focused on the need for clarification that participating private schools would not be considered recipients of federal funds. The final draft of the guidance confirmed that the language of ESEA ensures that participation in equitable services does not make a private school subject to the federal requirement of a particular program. The guidance specifically states, "the Department may not permit, allow, encourage, or authorize any Federal control over any aspect of any private, religious, or home school." The guidance offers further clarification, stating, "A private school is not a recipient of Federal financial assistance by virtue of its children or educators receiving equitable services under a covered ESEA program." Additionally, the guidance explains that "certain Federal requirements that apply to a recipient of Federal financial assistance are not directly applicable to a private school whose children or educators receive equitable services under the program, unless the school receives Federal financial assistance for other purposes."

Federal Court Rules in Favor of Religious Liberty for Religious Employers
The Fifth Circuit Court of Appeals, which has jurisdiction over Louisiana, Mississippi, and Texas, recently ruled in favor of religious liberty for employers. The case involved Braidwood Management, a for-profit business with about 70 employees, owned by a Christian. Braidwood sued the Equal Employment Opportunity Commission in a pre-enforcement challenge, requesting a religious exemption under the Religious Freedom Restoration Act of 1993 from the Supreme Court's interpretation of Title VII in *Bostock v. Clayton County*. In *Bostock*, the Supreme Court ruled that the definition of "sex" in the Title VII non-discrimination clause included "sexual orientation and gender identity." A lower district court halfheartedly agreed with Braidwood's argument, ruling that religious employers had the right to "hire, retain, and accommodate employees" according to religious beliefs, but also ruling that religious employers could not discriminate based on sexual orientation or regulate transgender treatments. After both parties appealed, the Fifth Circuit held that Braidwood was exempt from Title VII non-discrimination rules because Braidwood faced a substantial burden: violate its religious beliefs or violate Title VII. However, the Fifth Circuit did not rule on the ability of religious employers to enact sex-neutral policies. In addition to strengthening the rights of religious employers, this case could empower religious institutions of higher education. These institutions can now better argue a religious exemption from Title VII's anti-discrimination laws.

Iowa Judge Temporarily Blocks Heartbeat Law
Just days after it was enacted, Iowa's new heartbeat law was temporarily blocked by Polk County District Judge Joseph Seidlin. The law, which prohibits abortions after a heartbeat is detected except in certain cases such as rape or fetal abnormalities, was passed after Gov. Kim Reynolds called a special session of the Iowa legislature. "All life is precious and worthy of the protection of our laws," said Reynolds. Yet, the judge granted the injunction by claiming "there are good, honorable, and intelligent people—morally, politically, and legally—on both sides of this upsetting societal and constitutional dilemma." Seidlin relied on a 2022 Iowa Supreme Court precedent that barred the state from placing an "undue burden" on women seeking abortions. "This court does not get to declare that our [Iowa's] Supreme Court got it wrong and then impose a different standard," Seidlin said. Because Seidlin granted the injunction, Iowa's heartbeat bill currently has no effect in the state. However, a previous Iowa law prohibiting abortions after 20 weeks remains in effect. Gov. Reynolds has promised to appeal the injunction saying it is "just a matter of time" and that the newly-passed law is constitutional. "The abortion industry's attempt to thwart the will of Iowans and the voices of their elected representatives continues today," said Reynolds, "but I will fight this all the way to the Iowa Supreme Court where we expect a decision that will finally provide justice for the unborn."

In Case You Missed It:

Weekly Market Update provided by Jeff Beach of the AACS Investment Team at Merrill Lynch

Practical Legal Help for Christian Schools: ADF Ministry Alliance

Promise to America's Children

Poll Shows Support for School Choice Has Soared, Crossed Demographics

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