

# Employment Practices Liability

April 29, 2020

## Secretary DeVos Declines to Seek Congressional Waivers to FAPE, LRE Requirements of IDEA

By Robin Kallor, Partner, Rose Kallor, LLP

U.S. Secretary of Education Betsy DeVos released a statement yesterday that she is not recommending Congress pass any additional waiver authority concerning the Free Appropriate Public Education (FAPE) and Least Restrictive Environment (LRE) requirements of the *Individuals with Disabilities Education Act* (IDEA), reiterating that learning must continue for all students during the COVID-19 national emergency

As requested by Congress in the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*, Secretary DeVos examined certain federal education laws to determine what, if any, additional waiver authority the Secretary believes is necessary to provide limited flexibility to state and local education agencies during this unprecedented time. The Secretary determined there is no reason that a student's access to FAPE cannot continue online, through distance education or other alternative strategies.

While not advising any waivers to the core tenets of IDEA, the Department is requesting that Congress consider additional flexibilities on administrative requirements under the Perkins Act, the Rehabilitation Act of 1973, and the IDEA.

The Secretary requested that Congress defer the work or repayment requirements or allow credit to be given for the service obligation for recipients of IDEA personnel preparation grants (personnel development scholarships) if employment was interrupted by COVID-19. Regarding the Perkins Act, the Secretary is also recommending, among other things, a waiver that would allow local education agencies to keep any funds allotted to them for the 2019-2020 academic year that they have not spent during the COVID-19 national emergency. Without this waiver, these local education agencies would otherwise lose this money and have to return it to the State. The Secretary also requested Congress to permit Vocational Rehabilitation funds to be used to replace expired or spoiled food products at Randolph-Sheppard vending sites required to close due to COVID-19, thus providing support to vendors and allowing facilities to reopen more efficiently following the COVID-19 pandemic.

---

Robin Kallor is a partner at Rose Kallor, LLP. Rose Kallor, LLP regularly represents and advises private and public sector employers on matters pertaining to the employer-employee relationship, including the selection process, discrimination and harassment related issues and frequently conducts neutral workplace investigations. If you have questions about this legal update, please contact us at 860-361-7999. If you wish to receive future updates on labor and employment related topics, please contact Jacqueline Smith, Marketing and Creative Design Associate at [jsmith@ccm-ct.org](mailto:jsmith@ccm-ct.org).

**For more information about CIRMA's Employment Practices Liability Helpline Program, please contact your CIRMA Risk Management Consultant.**