



The Rocky Mountain District of the Lutheran Church - Missouri Synod

Friday, February 17, 2023

Dear Governor Polis:

We write today as a statewide coalition of Colorado private schools, policy leaders, and scholarship-granting organizations to request that your office intervene in the implementation of Colorado's Universal Preschool Program (UPK) with regard to the participation of faith-based providers.

Our coalition greatly appreciates your office's support for private schools in Colorado through the GAENS Program in recent months. As organizations focused on serving Colorado children, we are also strongly supportive of UPK. Many of our schools are eager to serve as providers as the program rolls out statewide.

We believe that Colorado's young children will be best served by a broad, diverse selection of preschool providers, including faith-based private providers. Private providers are an important part of Colorado's early childhood ecosystem, and we hope to see them continue to serve these students under the new program.

However, we believe that certain requirements under UPK will severely restrict the ability of faith-based providers to participate in the program without compromising their sincerely held religious beliefs. Unfortunately, this determination means that many private providers have chosen not to participate in UPK at this time—thereby depriving Colorado parents of many high-quality ECE options. And because the program is closely intertwined with the Denver Preschool Program, some providers are also having to reevaluate their longstanding participation in that program.

As you know, the UPK Program allows private schools—including faith-based private schools—to participate as preschool providers so long as they meet certain quality standards established in rule by the Colorado Department of Early Childhood. The governing statute mandates that those quality standards include a requirement that:

...EACH PRESCHOOL PROVIDER PROVIDE ELIGIBLE CHILDREN AN EQUAL OPPORTUNITY TO ENROLL AND RECEIVE PRESCHOOL SERVICES REGARDLESS OF RACE, ETHNICITY, RELIGIOUS AFFILIATION, SEXUAL ORIENTATION, GENDER IDENTITY, LACK OF HOUSING, INCOME LEVEL, OR DISABILITY, AS SUCH CHARACTERISTICS AND CIRCUMSTANCES APPLY TO THE CHILD OR THE CHILD'S FAMILY.

Additionally, the law excludes “classes operated primarily for religious instruction,” though it provides no specific definition or guidance on how that instruction is to be defined or identified.

These requirements go far beyond those found in federal law, and we believe some of them infringe upon the religious liberty of faith-based providers. These concerns have been raised by numerous schools with the Colorado Department of Early Childhood, and the department has discussed the possibility of exemptions for these providers in general terms. However, even as the program launches, we have received no clear guidance or information on if, how, or under what circumstances such exemptions might be provided.

Our coalition believes strongly in the autonomy of Colorado private schools, including the religious freedoms established in the First Amendment of the United States Constitution and upheld by U.S. Supreme Court precedent in recent rulings.

In 2017, the U.S. Supreme Court unambiguously supported the religious liberty of schools in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, where the Court found that the exclusion of a faith-based preschool under a public benefit program was in violation of the First Amendment’s Free Exercise Clause. In 2020, the Court further specified in *Espinoza v. Montana Department of Revenue* that programs providing educational options to parents may not discriminate against faith-based providers due to their status as religious organizations. And in 2022, the Court ended any remaining room for religious discrimination in such programs by clarifying in *Carson v. Makin* that states may not discriminate on the basis of either religious status or use of funds.

Due to these and other rulings, exemptions from similar requirements are routinely and automatically provided at the federal level. For instance, the U.S. Department of Agriculture announced in 2022 that religious schools would be provided automatic exemptions from broadened anti-discrimination rules under Title IX.

We believe that providing exemptions for faith-based religious providers from aspects of the UPK Program that those providers believe run counter to their sincerely held beliefs will maintain the legal and constitutional integrity of the program while enhancing the number and variety of preschools from which Colorado parents can choose.

We respectfully request that your office and the Department of Early Childhood engage with key stakeholders on the issue of these exemptions as soon as possible. Our coalition is eager to collaborate with your office on this subject.

Thank you for your time and leadership.

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