

Congress of the United States
Washington, DC 20515

October 14, 2020

The Honorable Sandra Bruce
Deputy Inspector General Delegated the Duties of Inspector General
Office of Inspector General
U.S. Department of Education
400 Maryland Ave, SW
Washington, D.C. 20202

Dear Deputy Inspector General Bruce:

We are writing to request the U.S. Department of Education (Department) Office of Inspector General (OIG) audit the Department's monitoring of States and localities' compliance with the equitable services requirement of Education Stabilization Fund grants.¹ On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).² The CARES Act required local educational agencies (LEAs) to provide equitable services "in the same manner" as section 1117 of the Elementary and Secondary Education Act (ESEA) of 1965.³ But the Department distorted the plain language of this section first through unauthorized guidance and then through unauthorized rulemaking,⁴ creating confusion and forcing LEAs to choose between delaying the use of some of their CARES funds or diverting more than a billion dollars of federal emergency aid from public school students to serve private school students.⁵

After the Department's months-long campaign attempting to force LEAs to divert these funds from their intended purpose, multiple federal courts ruled that the Department's ploy was unlawful.⁶ On September 4, 2020, the U.S. District Court for the District of Columbia held that the Department's interpretation was inconsistent with the plain text of the law and that "it is difficult to imagine how Congress could have been clearer."⁷ On September 25, 2020, the Department informed States that it would not appeal this ruling.⁸ This finally prevented the Department from forcing States and LEAs to use the funds differently than Congress intended.

Though the Department's position was ultimately struck down by federal courts, it has again attempted to siphon some of these funds away from public school students. In its September 25th notice to States referenced above, the Department stated that it "will not take any action against States or local districts that followed the

¹ Coronavirus Aid, Relief, and Economic Security Act, 20 U.S.C. § 3401 (Education Stabilization Fund § 18005).

² *Id.*

³ *Id.* at § 18005.

⁴ CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools, 85 Fed. Reg. 39,479, 39,481 (July 1, 2020).

⁵ See Michael Griffith, *COVID-19 and School Funding: What to Expect and What You Can Do*, Learning Policy Institute (Apr. 22, 2020), <https://learningpolicyinstitute.org/blog/covid-19-and-school-funding-what-expect-and-what-you-can-do>; see also Letter from Robert C. "Bobby" Scott et al., Chairman, Committee on Education and Labor to Elizabeth "Betsy" DeVos, Secretary, Department of Education (July 31, 2020) (on file with author), <https://edlabor.house.gov/download/house-senate-education-leaders-to-devos-stop-robbing-public-school-students-of-covid-19-relief-funding>.

⁶ See, e.g., *NAACP v. Dep't of Educ.*, No. 20-cv-1996-DLF, 2020 U.S. Dist. LEXIS 162662, at 13 (D.D.C. Sept. 4, 2020); see also *Michigan v. DeVos*, No. 20-cv-04478-JD at 1 (N.D.C.A. Aug. 26, 2020).

⁷ *Id.* at *8.

⁸ Letter from Elizabeth "Betsy" DeVos, Secretary, Department of Education to Chief State School Officers (September 25, 2020), <https://www.sscal.com/sites/default/files/ED%20equitable%20svcs%20letter%20Sept%2025.pdf>.

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guidance and/or the [interim final rule] prior to notice of the court's decision."⁹ Because Congress passed the CARES Act¹⁰ six months prior to the Department's letter, much of these emergency funds may have already been inappropriately allocated. States that do not require their LEAs to correct their initial allocations would not be in compliance with the law and it appears that the Department intends to ignore what could amount to federal taxpayer dollars intended for emergency aid in public schools being improperly spent.

Accordingly, we request that you audit the Department's oversight of the equitable services provisions of the CARES Act.¹¹ Further, we request you investigate State and local non-compliance with the equitable services provision of the CARES Act, should it come to your attention that a State or LEA is misusing CARES Act funds.¹²

Please send all official correspondence and information relating to this request to Staff for the House Committee on Education and Labor at Mariah.Mowbray@mail.house.gov, Staff for the House Committee on Appropriations Subcommittee on Labor, Health and Human Services, and Education, and Related Agencies at Philip.Tizzani@mail.house.gov, the Minority Staff for the Senate Committee on Health, Education, Labor and Pensions at Amanda_Beaumont@help.senate.gov, and the Minority Staff for the Senate Appropriations Subcommittee on Labor, Health and Human Services, and Education, and Related Agencies at Mark_Laisch@appro.senate.gov.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chair
Committee on Education and Labor
U.S. House of Representatives



PATTY MURRAY
Ranking Member
Committee on Health, Education,
Labor, and Pension
U.S. Senate
Subcommittee on Labor, Health and
Human Services, Education, and
Related Agencies
Committee on Appropriations
U.S. Senate



ROSA L. DELAURO
Chair
Subcommittee on Labor, Health and
Human Services, Education, and
Related Agencies
Committee on Appropriations
U.S. House of Representatives

⁹ *Id.*
¹⁰ Coronavirus Aid, Relief, and Economic Security Act, 20 U.S.C. § 3401 (Education Stabilization Fund §§ 18001–18008).
¹¹ Coronavirus Aid, Relief, and Economic Security Act, 20 U.S.C. § 3401 (Education Stabilization Fund § 18005).
¹² *Id.*