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COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

May 8, 2020

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary DeVos:

I write concerning an action taken by the U.S. Department of Education (Department) that could result in the diversion of hundreds of millions of taxpayer dollars intended for emergency coronavirus relief efforts to an unauthorized use, jeopardizing the response of public school systems in the states most severely impacted by the coronavirus crisis.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) authorizes the Secretary of Education to reserve 1% of grant funding under the Act's Education Stabilization Fund (\$307 million) "for grants to States with the highest coronavirus burden to support activities under this heading [Education Stabilization Fund] in this Act."¹ On April 27, the Department announced that it intended to use the vast majority of these funds, \$180 million, to create a series of grant programs, one of which mirrors the Department's longstanding, unauthorized proposal to create a federal school voucher program.² The Department then relied on an inappropriate set of metrics to determine the relative coronavirus burden of the states for this program; which will not result in the Department allocating the funds to the "States with the highest coronavirus burden" but instead preferences a subset of rural states, as well as states with existing voucher programs.

¹ The Coronavirus Aid, Relief, and Economic Security Act, § 18001(a)(3).

² U.S. Department of Education, *Notice Inviting Applications for the FY 2020 Education Stabilization Fund-Rethink K-12 Education Models (ESF-REM) Discretionary Grant Program* (Apr. 30, 2020).

I call on you to rescind this grant proposal that would direct Federal funding to for-profit companies and private schools, and to develop new metrics for grant programs authorized under this section that more accurately depict the relative burden coronavirus is having in the states. Congressional intent was to direct additional Federal funding to states with the highest coronavirus burdens to ensure their schools received the support and services necessary to address the needs of the students most disadvantaged during this pandemic. I ask that you recognize and adhere to this intent.

The Department diverted \$180 million intended for emergency coronavirus relief to fund a voucher scheme.

The Department's Rethink K12 Education Models Grant (Rethink Grant) is a competitive grant that allows states to create one of three types of state-run initiatives. The first of which invites states to propose "microgrant" programs. These microgrant programs, direct states to create parent-owned accounts that could be used to cover the costs of fee-for-service education providers "to expand educational choice."³ States must develop a list of providers approved to receive microgrant funds, and also operate and manage payments to private providers from these accounts. This program design is indistinguishable from a standard voucher scheme and is the latest attempt by this Department to promote privatization initiatives against both the wishes of the American people, and the intent of Congress.⁴

COVID-19 has disrupted our public education system and school districts are grappling with ensuring access to education for nearly 50 million children. But in response, the Department's microgrant proposal treats state public education systems as a little more than pass-through entities. There is no requirement that these taxpayer funds actually support public education. By directing states to allow these funds to be diverted to private fee-for-service educational providers, the Department has not faithfully adhered to Congressional intent to support the public school system that still educates the overwhelming majority of American students.

Public schools face the threat of severely stressed state budgets due to the response to the pandemic. With prior economic downturns as a guide, it follows that local school district budgets and high-poverty school districts will be highly impacted and likely to disproportionately feel the brunt of deficient state budgets.⁵ It is, therefore, imperative that federal funding go to states to help public schools support underserved students during this public health emergency.

³ While proposed programs must include vouchers for fee-for-service education programs, they can also, but need not, provide funds to parents to provide connective equipment. *Absolute Priority 1(b)(11)*.

⁴ See, e.g., U.S. Department of Education, *FY 2018 Budget Request*, p. F-15-16 (requesting \$370 million for Education Innovation and Research Funding and authorization to use those funds to create a voucher program); see See, e.g., Ulrich Boser et al. *The Highly Negative Impacts of Vouchers*, Center for American Progress (Mar. 20, 2018)

⁵ David S. Knight, *Are High-Poverty School Districts Disproportionately Impacted by State Funding Cuts?*, 43 *Journal of Education Finance*, 2 (Fall 2017).

Congress made clear in the CARES Act to direct the Department to reserve \$307 million “to support the activities under” the Education Stabilization Fund in the CARES Act. Activities listed in the Act include, for example, addressing the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth.⁶ It should be noted that the CARES Act does not create or otherwise authorize the creation of a voucher scheme. Congress intended these funds to aid *states with the highest coronavirus burden*; the Department’s voucher scheme does not adhere to this intent.

The Department’s methodology to determine coronavirus burden is mostly comprised of factors explicitly unrelated to coronavirus burden.

To prioritize CARES Act fund distribution, the Department developed a formula to identify the states with the highest coronavirus burden. But, only 40 percent of this formula is related to the “highest coronavirus burden.”⁷ The other 60 percent of the formula is split between the “quality of project services and project plan” and “quality of the management plan and adequacy of resources.”⁸ This allocation ignores explicit congressional direction and will deprive states with the highest coronavirus burden of much needed funds.

To make matters worse, half of the Department’s 40 percent relating to the calculation of “highest coronavirus burden” relies on a flawed formula that preferences a subset of rural states and states with existing voucher systems over the states with the most coronavirus cases and deaths. Here the Department relies on four equally weighted metrics for each state and then ranks states in quintiles. The four metrics that the Department chose to determine coronavirus burden are:

- 1) The percentage of the state’s population without broadband access;
- 2) The percentage of the state’s students living in poverty;
- 3) The number of the state’s coronavirus cases per capita; and
- 4) The percentage of the state’s students in rural school districts.

The Department provided no justification for any of these metrics in its announcement.⁹

While the first three metrics intuitively relate to the burden a state education system would face in response to the coronavirus, the Department’s rationale for preferencing rural states is not immediately discernable. To date, the overwhelming majority of COVID-19 hotspots in the

⁶ The Coronavirus Aid, Relief, and Economic Security Act, § 18003(d)(4).

⁷ U.S. Department of Education, *Notice Inviting Applications for the FY 2020 Education Stabilization Fund-Rethink K-12 Education Models (ESF-REM) Discretionary Grant Program*, p. 27-30 (Apr. 30, 2020).

⁸ *Id.*

⁹ U.S. Department of Education, *Notice Inviting Applications for the FY 2020 Education Stabilization Fund-Rethink K-12 Education Models (ESF-REM) Discretionary Grant Program* (Apr. 30, 2020).

country have been in metropolitan areas.¹⁰ Granted, the Center for Disease Control (CDC) Deputy Director for Infectious Diseases (Deputy Director) has indicated that rural areas face unique challenges responding to the virus, specifically in regard to broadband access and low healthcare capacity.¹¹ But the CDC is currently tracking hospital capacity and COVID-19 deaths, either of which is a more clear indicator of healthcare capacity.¹² And broadband access is explicitly contemplated in the first metric. Weighing the rural nature of a state *and* the state's lack of broadband access skews the measure of COVID-19 burden in an imprecise manner.

Notably, when discussing rural areas, the Deputy Director has also indicated that the virus will more slowly enter and spread in rural communities because of their lower population density.¹³ While the coronavirus has caused suffering and hardship across the country, public health experts predict that rural areas will simply have lower coronavirus burdens relative to other areas in the country. Unsurprisingly, this formula has generated counterintuitive results. For instance, Massachusetts has 76 times the number of COVID-19 cases and 77 times the number of coronavirus-related deaths as Vermont, but the Department has determined that Vermont has a far higher coronavirus burden.¹⁴

The Department's model has other troubling results. COVID-19 burden, as determined by the Department's measures, correlates closely with states that have existing voucher programs. Twice as many states in the top two quintiles of coronavirus burden have voucher programs (12)

¹⁰ The New York Times, *Coronavirus in the U.S.: Latest Map and Case Count*, last accessed May 7, 2020, available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

¹¹ U.S. Center for Disease Control, *Update for Rural Partners and Communities on the Coronavirus Disease 2019 (COVID-19) Response* (Mar. 23, 2020) available at <https://www.cdc.gov/policy/polaris/healthtopics/covid19-archive/CORONAVIRUS-updates.html>. (At 9:07 Deputy Director Jay Butler states: "We recognize that there are particular challenges in rural areas, there is a lot of dependence right now on the internet... and in rural areas broadband access can be quite limited... We also know that healthcare providers are already overtaxed in our rural areas.")

¹² U.S. Center for Disease Control, *COVID-19 Module Data Dashboard – Overview*, last accessed May 7, 2020, available at <https://www.cdc.gov/nhsn/covid19/report-overview.html>.

¹³ U.S. Center for Disease Control, *Update for Rural Partners and Communities on the Coronavirus Disease 2019 (COVID-19) Response* (Mar. 23, 2020) available at <https://www.cdc.gov/policy/polaris/healthtopics/covid19-archive/coronavirus-updates.html>. (At 30:00 Deputy Director Jay Butler states: "I think in general we will see slower entry [of Covid-19] into particularly the frontier areas because of lower volumes of traffic... I think its reasonable to assume that while the entry into rural areas may be lower and it may be easier to do some social distancing because of the lower population, we shouldn't assume that any part of the country is going to be spared.")

¹⁴ The New York Times, *Coronavirus in the U.S.: Latest Map and Case Count*, last accessed May 7, 2020, available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

as in the bottom two quintiles (6),¹⁵ and only two states in the bottom quintile have voucher programs.¹⁶

The Department must rework this formula to more accurately reflect the relative coronavirus burdens of states.

The Department must reverse this policy and ensure that these grant funds are directed at supporting states with the highest coronavirus burden engage in activities contemplated by the CARES Act.

The CARES Act allocated \$307 million to support states with the highest coronavirus burden and outlined the services that should be provided to address the problem. The Department has ignored this directive and instead repurposed these funds to pursue its perennial goal of establishing a national private school voucher program. While all states have been impacted, the plain text of the CARES Act directs the Department to support states with the highest burden. In response the Department has crafted a formula that correlates more with the presence of existing voucher programs than a straightforward measure like coronavirus deaths per capita.

Accordingly, I call on the Department both to rethink its microgrant proposal and ensure that emergency relief funding is truly prioritized towards supporting states with the highest Coronavirus burden.

Given the importance for transparency on the \$180 million in emergency aid, I request that the Department respond to the following questions no later than May 25.

- 1) Please provide the rationale for each subpart of the Department's methodology for determining the highest coronavirus burden. This should include the Department's
 - a. Rationale for choosing to preference states with more rural schools over other states;
 - b. Rationale for weighting only the "highest coronavirus burden" 40% of its selection criteria; and,
 - c. Plan for assessing the extent to which each state has a high coronavirus burden based on indicators and information factors identified by the applicant.

¹⁵ According to ed choice, fifteen states and Washington D.C. have school voucher programs. Of the states in the Department's top two quintiles of coronavirus burden the following states have voucher programs: Indiana, Georgia, Louisiana, Oklahoma, South Carolina, Tennessee, Arkansas, Maine, Mississippi, Puerto Rico, North Carolina, and Vermont. Of the states in the Department's bottom two quintiles of coronavirus burden the following states have voucher programs: Utah, Maryland, D.C., Florida, New Hampshire, and Wisconsin. ed choice, *What are School Vouchers*, last accessed May 7, 2020, available at <https://www.edchoice.org/school-choice/types-of-school-choice/what-are-school-vouchers-2/>.

¹⁶ Of the states in the Department's bottom quintile of coronavirus burden the following states have voucher programs: Utah and Maryland. ed choice, *What are School Vouchers*, last accessed May 7, 2020, available at <https://www.edchoice.org/school-choice/types-of-school-choice/what-are-school-vouchers-2/>.

The Honorable Betsy DeVos

May 8, 2020

Page 6

- 2) Please provide any communications between the Department and the CDC when creating a methodology for determine what states have the highest coronavirus burden.

Within two weeks of the Department's review of State applications, please provide to the Committee:

- 1) All peer reviewed written evaluations, and scores referenced in the Department's invitation of application;¹⁷
- 2) All application materials submitted;
- 3) All notifications of grant award or denial.

Please send all official correspondence relating to this request to the Committee's Chief Clerk at Tylease.Fitzgerald@mail.house.gov.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman

Cc: The Honorable Virginia Foxx, Ranking Member

¹⁷ U.S. Department of Education, *Notice Inviting Applications for the FY 2020 Education Stabilization Fund-Rethink K-12 Education Models (ESF-REM) Discretionary Grant Program*, p. 31 (Apr. 30, 2020).