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October 29, 2020

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

Dear Secretary DeVos:

We write regarding the U.S. Department of Education's (the Department) recent actions to prevent public discussion of systemic racism and critical race theory. Such actions not only threaten to exacerbate existing structures of racism in the education system and broader society, but also infringe on an ideal the Department regularly invokes—free speech. It is also inappropriate for the Department to wield its oversight powers to limit free and open discourse, even if leadership at the Department does not agree with that discourse.

The Department recently acknowledged the ideals of freedom of speech and expression in the preamble to a final rule, which claimed “to encourage institutions of higher education to foster environments that promote open, intellectually engaging, and diverse debate.”¹ The preamble continues by stating that “[a]cademic freedom’s noble premise is that the vigilant protection of free speech unshackled from the demands and constraints of censorship will help generate new thoughts, ideas, knowledge, and even questions and doubts about previously undisputed ideas.”

However, the Department’s recent campaign against specific schools of thought, such as critical race theory, undermines the very ideals it professes and raises serious questions. Recent examples illustrate this disturbing trend. First, the Department opened an investigation into Princeton University because its President acknowledged the existence of “systemic racism” on

¹ Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program, 85 Fed. Reg. 59,916 (Sept. 23, 2020) (to be codified at 34 C.F.R. pt. 75, 76, 106, 606, 607, 608, 609a).

campus. Second, President Trump indicated that the Department was investigating California public schools after the state adopted an ethnic studies course as part of its high-school curriculum and that sanctions could include defunding those schools. Finally, President Trump announced the creation of a “patriotic education commission” (1776 Commission) that would push educators to teach a federally developed curriculum, which is prohibited by law.

These examples of the Department’s attempts to interfere with academic expression are by no means exhaustive. For instance, the Department has “censored viewpoints that are critical of the Department’s policies”² by preventing Department staff from accessing certain websites and recently targeted staff-led book clubs that discuss certain race-related topics, such as critical race theory.³ Additionally, the Department has opened an investigation into the University of California, Los Angeles (UCLA) for allegedly “improperly and abusively target[ing]” a white professor who repeatedly used the N-word in a classroom setting. In reality, UCLA’s discrimination prevention office has simply launched a review of the incident and has not yet come to any conclusions. It seems self-evident that a university should be able to *consider* whether a white professor should use an extremely offensive racial slur without being subject to the heavy hand of a federal investigation. And it is bizarre that the federal government would attempt to forestall such consideration by the University, casting aside any opportunity to reflect on whether a student is entitled to a federally subsidized education without being subject to the use of racial slurs. Accordingly, this Department’s recent investigations and related policies raise serious questions about its commitment to academic liberty.

The Department is wielding its investigative cudgel to chill the free exchange of ideas at universities.

On September 2, 2020, Princeton President, Christopher L. Eisgruber, wrote an open letter to the Princeton community describing the next steps Princeton would take to address systemic racism at Princeton. This letter described self-evident facts about racism in America. In President Eisgruber’s words:

*Racism and the damage it does to people of color nevertheless persist at Princeton as in our society, sometimes by conscious intention but more often through unexamined assumptions and stereotypes, ignorance or insensitivity, and the systemic legacy of past decisions and policies. Race-based inequities in America’s health care, policing, education, and employment systems affect profoundly the lives of our staff, students, and faculty of color.*⁴

² See Letter from Andy Levin, Vice Chairman, U.S. House of Representatives Education and Labor Committee and Jamie Raskin, Chairman, U.S. House of Representatives Oversight Subcommittee on Civil Rights and Civil Liberties to Betsy DeVos, Secretary, U.S. Department of Education (Oct. 7, 2019).

³ See Michael Stratford, *In Crackdown on Race-related Content, Education Department Targets Internal Book Clubs, meetings*, Politico (Sept. 9, 2020, 11:00 PM EDT) <https://www.politico.com/news/2020/09/09/education-department-race-related-content-411487>.

⁴ Christopher Eisgruber, *Letter from President Eisgruber on the University’s Efforts to Combat Systemic Racism* (Sept. 2, 2020, 2:53 PM EDT) <https://www.princeton.edu/news/2020/09/02/letter-president-eisgruber-universitys-efforts-combat-systemic-racism>.

This letter outlined policy initiatives that Princeton planned to undertake to create and foster a more inclusive and diverse environment.⁵ What should have been another positive but otherwise unremarkable example of an institution grappling with its own troubled past was met with the heavy hand of a government investigation.

Two weeks after President Eisgruber released this letter, the Department threatened to revoke Princeton's funding and reclaim \$75 million in prior awards because of the content of the quote above.⁶ The Department claims that Princeton's assurances of nondiscrimination and equal opportunity may have been false because it now "admits" systemic racism on campus.⁷ While the Department's investigative letter references Princeton's newly developed policies to ameliorate systemic racism, it does not actually cite any racially problematic policies, outcomes, or other tangible effects.⁸ Instead the Department clarifies that the sole impetus of this investigation are the *words* of Princeton's President.⁹ The message is clear: If institutional actors speak up about systemic racism, this Administration will publicly repossess its federal aid.

Multiple conservative pundits have lauded the Department's investigation, referring to it as a "superb example of trolling."¹⁰ The Department provided an exclusive story on its opening of this investigation to a media outlet with well-documented conservative bias, raising legitimate questions as to whether media attention is the goal of this probe.¹¹ Although the investigative arm of the federal government must be exercised with sobriety, the Department uses these levers of power to discourage institutional actors from facing racism in America and on their campuses, threatening fundamental American ideals. The Department's investigation and threat to seize tens of millions of dollars from Princeton for the words of its President is a remarkable and dangerous infringement on free speech and the liberty of expression.

The Department must clarify if it will seek to unlawfully withhold billions in federal education funds from California's most at-risk students.

On August 31, 2020, California passed a law requiring students graduating in 2030 to take one class on ethnic studies prior to graduation.¹² States change curriculum requirements with some regularity, so the addition of a single semester course requirement would normally be a banal

⁵ *Id.*

⁶ See Letter from Robert King, Assistant Secretary Office of Postsecondary Education, U.S. Department of Education, to Christopher L. Eisgruber, President, Princeton University, (September 16, 2020) <https://www.princeton.edu/sites/default/files/documents/2020/09/Princeton-Letter-9-16-20-Signed.pdf>.

⁷ *Id.*

⁸ *Id.*

⁹ *See id.*

¹⁰ See Rod Dreher, *Betsy DeVos Calls Princeton's Bluff*, The American Conservative (Sept. 17, 2020, 3:52 PM), <https://www.theamericanconservative.com/dreher/betsy-devos-calls-princeton-bluff/>; see also Post Editorial Board, *Betsy DeVos' Epic Trolling of Princeton University Serves a Real Purpose*, New York Post (Sept. 20, 2020, 7:23 PM), <https://nypost.com/2020/09/20/betsy-devos-epic-trolling-of-princeton-serves-a-real-purpose/>.

¹¹ Tiana Lowe, *EXCLUSIVE: Education Department Opens Investigation into Princeton University After President Deems Racism 'Embedded' in the School*, Washington Examiner (Sept. 17, 2020, 2:05 PM), <https://www.washingtonexaminer.com/opinion/exclusive-education-department-opens-investigation-into-princeton-university-after-president-deems-racism-embedded-in-the-school>.

¹² A.B. 331, 2019-20 Assemb., Reg. Sess. (Cal. 2020).

policy shift. However, after a conservative twitter account mischaracterized this curriculum requirement as “implement[ing] the 1619 project into the public schools,” President Trump confirmed that the Department was investigating California’s new curriculum requirements and indicated that the Department may revoke federal funding.¹³ The Department’s investigation and potential sanction is in direct contrast with your statement that “[c]urriculum is best left to the states and local districts.”¹⁴

More importantly, the federal investigation into state curriculum and subsequent sanction based on the content of that curriculum violate an explicit provision of the General Education Provisions Act (GEPA).¹⁵ Specifically, GEPA prohibits the federal government from “exercis[ing] any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system.”¹⁶ This statutory prohibition would clearly apply to any investigation or withholding of funding to California children and if successful, would set a dangerous precedent for future administrations. The Committee has requested additional information from the Department regarding what the administration’s threats to withhold funds from California schools, but the Department refused to provide any details.¹⁷

COVID-19 has greatly disrupted state budgets and forced states to make hard decisions, some of which include cutting education spending for our nation’s children. States need certainty now more than ever regarding federal funding. California students and families must know whether the federal government will attempt to deprive low-income students of the nearly \$4.5 billion in federal funding provided to California under federal elementary and secondary programs.¹⁸ The Department must clarify its intentions regarding state-determined curriculum immediately.

The Development of the 1776 Commission appears to violate statutory prohibitions on the creation of a federal curriculum.

In addition to threatening California’s federal funding due to its lawfully developed curriculum, President Trump recently announced the development of the 1776 Commission in an effort to create an unlawful federal curriculum.¹⁹ In announcing this proposal, President Trump assailed various legitimate schools of thought, claiming that “[c]ritical race theory, the 1619 Project, and

¹³ President Donald Trump (@realDonaldTrump), Twitter, (Sept. 6, 2020, 8:34 AM), <https://twitter.com/realDonaldTrump/status/1302586046551597061?s=20>.

¹⁴ Nick Niedzwiedek, *Trump Goes After Black Lives Matter, ‘Toxic Propaganda’ in Schools*, Politico (Sept. 17, 2020, 3:10 PM EDT), <https://www.politico.com/news/2020/09/17/trump-black-lives-matter-1619-project-417162>.

¹⁵ 20 U.S.C. § 1232a.

¹⁶ *Id.*

¹⁷ See E-mail from Staff, Committee on Education and Labor, to Staff, Department of Education (Sept. 17, 2020 3:50 PM EDT) (on file with author); see also E-mail from Staff, Department of Education, to Staff, Committee on Education and Labor (Sept. 18, 2020 3:47 PM EDT) (on file with author).

¹⁸ *Fiscal Years 2019-2021 State Tables for the U.S. Department of Education*, U.S. Department of Education (July 7, 2020), <https://www2.ed.gov/about/overview/budget/statetables/index.html#update>.

¹⁹ President Donald Trump, *Remarks by President Trump at the White House Conference on American History*, (Sept. 17, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-white-house-conference-american-history/>.

the crusade against American history is toxic propaganda, ideological poison that, if not removed, will dissolve the civic bonds that tie us together. It will destroy our country.”²⁰ President Trump then alleged that his 1776 Commission will “promote patriotic education” and “encourage our educators to teach our children about the miracle of American history.”²¹ While the President has not yet detailed his plan, his description thus far is one of a federally developed and promoted national curriculum. This would run afoul of the above-referenced prohibition that prevents the federal government from “exercise[ing] any direction, supervision, or control over the curriculum of any school,”²² raising questions about its legality.

Of further concern, President Trump indicated that a Chinese-owned company named ByteDance would be funding this initiative with “a 5-billion-dollar contribution toward education.”²³ This proposal raises additional questions regarding the legality and propriety of accepting billions in funding from foreign corporations to develop a “patriotic” education commission.

To better understand the Department’s purpose in investigating those with different political views from its current leadership, we request the Department respond to the following questions no later than November 12th, 2020.

- 1) Is the Department investigating the State of California or any school districts in California in relation to California Assembly Bill 331?²⁴
 - a. What is the nature and extent of this investigation?
 - b. What potential sanctions might the Department enact against California?
- 2) Is the Department investigating the State of California or any school districts in California regarding the teaching of the 1619 project?
 - a. What is the nature and extent of this investigation?
 - b. What potential sanctions might the Department enact against California?
- 3) Please specify the statutory authority that the Department is relying upon to investigate a state based on its curriculum choice.
- 4) Please specify the statutory authority that the Department could rely upon to restrict federal funding to a state based on its curriculum choice.
- 5) Provide all records concerning, relating to, or referencing the Department’s investigation into Princeton University.

²⁰ *What Trump Is Saying About 1619 Project, Teaching U.S. History*, PBS (Sept. 17, 2020, 6:20 PM EDT), <https://www.pbs.org/newshour/show/what-trump-is-saying-about-1619-project-teaching-u-s-history>.

²¹ President Donald Trump, *Remarks by President Trump at the White House Conference on American History*, (Sept. 17, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-white-house-conference-american-history/>.

²² 20 U.S.C. § 1232a.

²³ President Donald Trump, *Remarks by President Trump Before Marine One Departure*, (Sept. 19, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-marine-one-departure-092020/>; see also Isobel Asher Hamilton, *TikTok's Chinese Owner Contradicted 2 of Trump's Key Boasts About its Deal with Walmart and Oracle*, Business Insider (Sept. 21, 2020, 6:26 AM), <https://www.businessinsider.com/bytedance-contradicts-president-trump-tiktok-oracle-deal-2020-9> (“Do me a favor, could you put up \$5 billion into a fund for education so we can educate people as to the real history of our country.”).

²⁴ A.B. 331, 2019-20 Assemb., Reg. Sess. (Cal. 2020).

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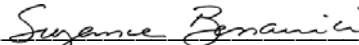
- 6) Provide details regarding the 1776 Commission:
- a. What will the Department's role be on the 1776 Commission?
 - b. Enumerate all products the 1776 Commission intends to produce.
 - c. Will the 1776 Commission or the Department recommend, incentivize, coerce, or require states to incorporate specific elements into state curriculum?

Please send all official correspondence and information relating to this request to the Committee's Clerk, Mariah Mowbray, at Mariah.Mowbray@mail.house.gov.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chair



SUZANNE BONAMICI
Chair
Subcommittee on Civil Rights and
Human Services

Cc: The Honorable Virginia Foxx, Ranking Member

Cc: The Honorable Ben Cline, Ranking Member, Subcommittee on Civil Rights and Human
Services
