

Congress of the United States
Washington, DC 20515

October 5, 2020

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

Dear Secretary DeVos:

We write regarding South Carolina's use of Governor Emergency Education Relief (GEER) funds¹ to develop a voucher scheme. This scheme appears to violate the plain text of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)² as well as the Department's related guidance.³

The South Carolina Governor's office has dedicated \$32 million of its GEER funds to develop the Safe Access to Flexible Education (SAFE) grants program.⁴ To participate in the SAFE program, parents apply for grants of up to \$6,500 per student which South Carolina will award to a combination of the first eligible applicants and those who win a lottery.⁵ Once awarded, South Carolina will disburse these GEER funds into parent-controlled accounts for tuition payments to private schools.⁶ As the South Carolina Governor explicitly stated in court: "The students and their families, not the schools, are the direct beneficiaries of these funds."⁷

The GEER fund is a flexible grant that allows each Governor who obtains an award to provide funds towards one of three uses.⁸ Governors may use these funds to provide grants to:

- 1) Local educational agencies (LEAs) that have been most significantly impacted by coronavirus;
- 2) Institutions of higher education (IHEs) that have been most significantly impacted by coronavirus; and

¹ Coronavirus Aid, Relief, and Economic Security Act, 20 U.S.C. § 3401 (Emergency Funding for Education § 18002).

² *Id.*

³ U.S. Department of Education, Governor's Emergency Education Relief Fund; Frequently Asked Questions about the Governor's Emergency Education Relief Fund (GEER Fund) 3, <https://oese.ed.gov/files/2020/05/FAQs-GEER-Fund.pdf> (last visited Sept., 23, 2020) (Question A-7).

⁴ My SC Education, *SAFE Grants FAQ for Schools (2020)*, <https://mysceducation.org/safe-grants-faq-for-schools/#:~:text=What%20are%20Safe%20Access%20to%20Flexible%20Education%20%28SAFE%29,made%20to%20the%20Office%20of%20Governor%20Henry%20McMaster> (last visited Sept., 23, 2020).

⁵ *Id.*

⁶ *Id.*

⁷ Brief of Respondent at 32, *Adams v. McMaster*, Appellate Case No. 2020-001069 (Sup. Ct. S.C.) (2020).

⁸ Coronavirus Aid, Relief, and Economic Security Act, 20 U.S.C. § 3401 (Emergency Funding for Education § 18001).

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- 3) Other IHEs, LEAs, or education related entities that the governor deems essential for carrying out specified emergency educational services to students.

The SAFE grant program does not award grants to LEAs, IHEs, or other education related entities; rather, vouchers are awarded directly to parents.⁹ The Department's guidance clarifies that this is not an allowable use of GEER funds. Specifically, it states:

*"May the Governor use GEER funds to award scholarships, microgrants or financial aid directly to students or teachers? No, not directly . . . A Governor is prohibited from awarding GEER funds to individuals."*¹⁰

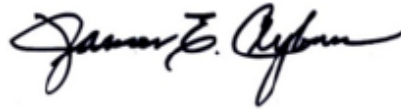
Accordingly, we request that you review South Carolina's SAFE grants program to determine if it complies with the relevant sections of the CARES Act.¹¹ Additionally, please provide all communication between any representative of the South Carolina Governor's office and the Department of Education related to the development, implementation, or legality of South Carolina's SAFE grant program. Please provide these documents no later than October 16, 2020.

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

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman
Committee on Education and Labor



JAMES E. CLYBURN
Chairman
Select Subcommittee on the Coronavirus Crisis

Cc: The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor

Cc: The Honorable Steve Scalise, Ranking Member Select Subcommittee on the Coronavirus Crisis

Cc: The Honorable Sandra Bruce, Deputy Inspector General Delegated the Duties of Inspector General

⁹ My SC Education, *SAFE Grants FAQ for Schools (2020)*, <https://mysceducation.org/safe-grants-faq-for-schools/#:~:text=What%20are%20Safe%20Access%20to%20Flexible%20Education%20%28SAFE%29,made%20to%20the%20Office%20of%20Governor%20Henry%20McMaster> (last visited Sept., 23, 2020); *see also* Brief of Respondent at 32, *Adams v. McMaster*, Appellate Case No. 2020-001069 (Sup. Ct. S.C.) (2020) ("Simply put, the parent or guardian controls if, when, and to which eligible institution the sub-grant or grant funds are distributed. In other words, the SAFE Grants Program is not directly funding independent or private schools. All funds are inextricably tied to the children and directed by the students' parents or guardians. The students and their families, not the schools, are the direct beneficiaries of these funds.")

¹⁰ U.S. Department of Education, Governor's Emergency Education Relief Fund; Frequently Asked Questions about the Governor's Emergency Education Relief Fund (GEER Fund) 3, <https://oese.ed.gov/files/2020/05/FAQs-GEER-Fund.pdf> (last visited Sept., 23, 2020) (Question A-7).

¹¹ Coronavirus Aid, Relief, and Economic Security Act, 20 U.S.C. § 3401 (Emergency Funding for Education § 18002).