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SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS
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<https://coronavirus.house.gov>

July 17, 2020

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

Dear Madame Secretary:

The Select Subcommittee on the Coronavirus Crisis is examining efforts by you and others in the Trump Administration to pressure schools around the country to quickly reopen for in-person learning regardless of public health guidance—consistent with the White House’s view that “the science should not stand in the way.”¹ Getting our kids back to school is vitally important, but disregarding local, state, and federal public health guidance could put children, teachers, and families at risk of infection and death from the coronavirus. I am particularly concerned that, contrary to the laws passed by Congress, you have threatened to cut off federal funds from schools that do not accede to your potentially dangerous demands. I urge you to rescind this illegal threat and allow schools to make reopening decisions based on the best available science.

When Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), it created the Education Stabilization Fund (ESF) “to prevent, prepare for, and respond to coronavirus, domestically or internationally.”² The ESF includes the \$13.2 billion Elementary and Secondary School Education Relief (ESSER) Fund to support elementary and secondary education, including for preparation and response to the coronavirus crisis and other purposes. The ESF also includes the \$3 billion Governor’s Emergency Education Relief Fund (GEER Fund) for governors to allocate to school districts, institutions of higher education, or other education-related entity.

Congress appropriated these funds to make schooling safe and effective during the pandemic—with the full expectation that schools would need to take extraordinary measures to adapt to an unprecedented public health crisis. The statute specifically permits these funds to be used for schooling that may not be the typical in-person, full-day, every weekday schedule. For

¹ ‘Science Should Not Stand In The Way’ of Schools Reopening, *White House Press Secretary Kayleigh McEnany Says*, USA Today (July 16, 2020) (online at www.usatoday.com/story/news/politics/2020/07/16/mcenany-science-should-not-stand-way-schools-reopening/5454168002/).

² Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136 (2020).

example, ESSER funds can be used for “planning for and coordinating during long-term closures,” determining “how to provide technology for online learning to all students,” and “purchasing educational technology.” Congress also allowed ESSER funds to be used for “coordination of preparedness and response efforts of local educational agencies with . . . public health departments.” In short, Congress intended schools to have the opportunity to use federal funds to adapt to public health guidelines.

The Centers for Disease Control and Prevention (CDC) has issued guidance for K-12 schools that include wearing cloth face coverings, keeping small groups of students and staff together, staggering scheduling, staying home when appropriate, and offering virtual options for students and staff. According to this guidance, “[f]ull sized, in-person classes” present the “Highest Risk” of spreading the coronavirus.³

In a recent interview, you refused to agree that schools should follow CDC’s guidance and instead stated, “CDC guidelines are just that, meant to be flexible and meant to be applied as appropriate for the situation.”⁴ Vice President Mike Pence echoed this two days later, saying, “we don’t want federal guidance to be a reason why schools don’t reopen.”⁵

On July 8, 2020, President Trump wrote that he “[m]ay cut off funding” if schools are not “open before the November Election.”⁶ Likewise, you stated: “If schools aren’t going to reopen and not fulfill that promise, they shouldn’t get the funds.”⁷ Neither the President nor the Secretary of Education has the legal authority to cut off funds to schools on this basis. There is no legal justification to deny federal funds authorized and appropriated by Congress—whether under the CARES Act or Title I of the Elementary and Secondary Education Act—as retaliation for schools engaging in virtual learning during the pandemic.⁸ Moreover, it would be highly inappropriate for the federal government to demand that students and teachers return to school based on an election schedule, rather than the best available science.

³ Centers for Disease Control, *Considerations for Schools* (May 19, 2020) (online at www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html).

⁴ *Dismissing ‘Flexible’ CDC Guidelines, Education Secretary Betsy DeVos Doubles Down on Pushing Schools to Reopen*, Time Magazine (July 12, 2020) (online at <https://time.com/5865987/betsy-devos-school-reopening-coronavirus/>).

⁵ The White House, *Remarks by Vice President Pence During a Roundtable on Higher Education Reopening* (July 14, 2020) (online at www.whitehouse.gov/briefings-statements/remarks-vice-president-pence-roundtable-higher-education-reopening/).

⁶ @realDonaldTrump, *Twitter* (Jul. 8, 2020) (online at <https://twitter.com/realDonaldTrump/status/1280853299600789505>) (“In Germany, Denmark, Norway, Sweden and many other countries, SCHOOLS ARE OPEN WITH NO PROBLEMS. The Dems think it would be bad for them politically if U.S. schools open before the November Election, but it is important for the children & families. May cut off funding if not open!”).

⁷ *Not Dangerous: DeVos Defends Schools Reopening According to CDC Guidelines*, Politico (July 12, 2020) (online at www.politico.com/news/2020/07/12/betsy-devos-schools-reopen-357840).

⁸ *Trump and DeVos Say They’ll Withhold Money From Schools for Note Reopening. Can They?*, Mother Jones (July 8, 2020) (online at www.motherjones.com/politics/2020/07/trump-devos-schools-reopening/).

Your statements have created confusion among state and local officials and school districts that are already facing challenges to plan and pay for accommodations to address the ongoing public health crisis. As of June 25, 2020, the General Accountability Office reported that although “97 percent of the ESSER Fund had been obligated,” only “1 percent had been expended.” Similarly, “67 percent of the GEER Fund had been obligated and less than 1 percent had been expended.”⁹ You acknowledged on July 12, 2020, that only 2 percent of these funds “has actually been spent yet or drawn down.”¹⁰ Your threat to deny funding may further delay and complicate schools’ decisions on expending ESSER and GEER funds, just as states and school districts are hurriedly preparing for the start of the new school year.

The Select Subcommittee requests that you provide a staff briefing on these issues by July 24, 2020, and produce the following documents and information by July 31, 2020. These requests are consistent with House Resolution 935, which established the Select Subcommittee on the Coronavirus Crisis to “to conduct a full and complete investigation” of the “efficiency, effectiveness, equity, and transparency of the use of taxpayer funds and relief programs to address the coronavirus crisis,” the nation’s “preparedness for and response to the coronavirus crisis,” and “any other issues related to the coronavirus crisis.”

1. Provide a detailed explanation of any efforts or plans by the Department to condition any grant, disbursement, or expenditure of funds on the re-opening of schools in-person, full-time, or every weekday, including the amount and source of funds conditioned, the basis for these conditions, and a list of entities denied funding as a result of this effort.
2. Provide any technical assistance, frequently asked questions, guidance, memoranda, or other communications the Department provided to states, cities, or local educational agencies, regarding:
 - a. requirements, conditions, and guidelines for receiving or spending CARES Act funds for K-12 education, or
 - b. re-opening schools.
3. Describe any action the Department has taken to procure and distribute, or facilitate procurement and distribution of, personal protective equipment for use in schools.

An attachment to this letter provides additional instructions for responding to the Select Subcommittee’s request. If you have any questions regarding this request, please contact Committee staff at (202) 225-4400.

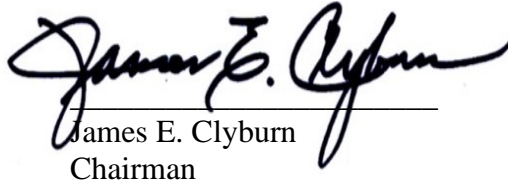
⁹ Government Accounting Office, *COVID-19: Opportunities to Improve Federal Response and Recovery Efforts* (June 25, 2020) (GAO-20-625) (online at www.gao.gov/reports/GAO-20-625/#appendix38).

¹⁰ *State of the Union*, CNN (July 12, 2020) (online at www.cnn.com/videos/politics/2020/07/12/sotu-devos-full.cnn).

The Honorable Betsy DeVos
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Thank you, in advance, for your prompt attention to this matter.

Sincerely,



James E. Clyburn
Chairman

Enclosure

cc: The Honorable Steve Scalise, Ranking Member

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.