



Majority Leader Mitch McConnell (KY)
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

Minority Leader Charles E. Schumer (NY)
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

Chairman Lamar Alexander (TN)
United States Senate
Health, Edu., Labor, & Pensions Cmt.
428 Senate Dirksen Office Building
Washington, DC 20510

Ranking Member Patty Murray (WA)
United States Senate
Health, Edu., Labor, & Pensions Cmt.
428 Senate Dirksen Office Building
Washington, DC 20510

Chairman Richard Shelby (AL)
United States Senate
Appropriations Committee
Room S-128 of the Capitol Building
Washington, DC 20510

Ranking Member Patrick Leahy (VT)
United States Senate
Appropriations Committee
Room S-128 of the Capitol Building
Washington, DC 20510

July 21, 2020

Dear Senators McConnell, Schumer, Alexander, Murray, Shelby, and Leahy:

The Southern Education Foundation (SEF) writes to express our concerns with recent efforts by the Trump Administration and the federal Supreme Court to support private schools with federal tax-payer dollars and encourage you and your congressional colleagues to reinvest in the public school system that educates the overwhelming majority of students in the United States.

As public school systems across the nation struggle with the financial and logistical challenges associated with COVID-19, the White House, the U.S. Department of Education (ED), and the federal court continue to promote and implement regulations and laws that serve to weaken the public education system in the United States. Estimates show that southern states, on average, will experience a budget shortfall of \$6 billion in the coming fiscal yearⁱ, and in 11 states in the South, over one-third of students do not have access to high-speed internet at home.ⁱⁱ School districts and school staff lack clear and consistent guidance on how to hold in-person classes in the fall. Meanwhile, Secretary Betsy DeVos has issued regulations that shift scarce federal education dollars to private schools.

Below is a synopsis of the recent federal activity and events that are undermining public schools, and recommended public school appropriations in the next COVID-19 relief package.

1) ED's July 2020 equitable services rule increasing federal allocations to private schools

The federal government's existing equitable services provision in the CARES Act explicitly states that the proportion of federal funds allocated to serving private school students shall be equal to

the proportion of students from low-income families who attend private schools.ⁱⁱⁱ However, published guidance from ED in April of this year and a binding interim rule in July amend the existing equitable services long-standing policy to allow a disproportionate amount more of CARES Act funds to flow to private schools.^{iv} For example, it is estimated that the Secretary DeVos' new equitable services rule will create an acute burden on school districts in Louisiana^v and Texas^{vi}, which will have to distribute an extra \$23 million and \$38 million, respectively, to private schools in their states. By issuing a new rule, Secretary DeVos ignored the directive outlined in the CARES Act to allocate equitable services funding based on a district's percentage of students from low-income families and ignored congressional intent, established law under ESSA, and the very urgent resource-related needs of public school districts across the nation.

2) ED's interpretation of CARES Act education appropriations to advance private school choice

In April of this year, Secretary DeVos announced that one percent, or \$307.5 million, of the total appropriations for education within the CARES Act would be set-aside for discretionary "microgrants" for families to give them access to virtual and private education programs, experimental remote education programs, and workforce and career training programs for students.^{vii} Issued on a competitive basis, the one percent allocation was originally intended for support to states especially burdened by COVID-19. The CARES Act also includes \$3 billion in education funding referred to as the Governor's Emergency Education Relief (GEER) fund that ED directly distributed to the governor of each state. Secretary DeVos provided governors guidance that allows GEER funds to be used to support school privatization efforts such as school vouchers. Despite expected budget shortfalls, Secretary DeVos is encouraging additional tax-payer dollars to advance the well-being of private schools.

3) Private schools' ability to access Paycheck Protection Program (PPP) loans allocated through the CARES Act

Reports show that private schools in many states nationwide accepted large PPP loans, even as other sources of federal funding became available to them. In Arkansas, for example, a partial list shows at least five elite private schools receiving PPP loans, which public schools cannot access, totaling at least \$5 million.^{viii} In the Baltimore, Maryland area, 14 private schools each received more than \$2 million in PPP loans, including one that received more than \$5 million.^{ix} Private schools can effectively double, triple, and quadruple dipping in different pools of recent federal resources intended for public schools.

4) The June 2020 Supreme Court decision in *Espinoza v. Montana Department of Revenue*

On June 30, the Supreme Court of the United States (SCOTUS) handed down a 5-4 ruling overturning the Montana Supreme Court's decision invalidating the state's tax-credit scholarship program.^x We believe that the present-day application of the no-aid provision in Montana and the 36 other states with similar restrictions on the use of public monies for religious purposes constitutes a needed separation between church and state, and prevents the use of taxpayer dollars toward the furthering of a specific religious cause or purpose. More broadly, it puts a limit on the extent to which states can use taxpayer dollars toward school privatization programs - a goal that is supportive of the advancement of public education in our nation.

5) Education Secretary Betsy DeVos' federal tax-credit scholarship initiative, "Education Freedom Scholarships"

Earlier this year, the Trump Administration proposed FY2021 budget requested \$5 billion in

annual, dollar-for-dollar tax credits to individuals who donate to select Scholarship Granting Organizations (SGOs) that fund private school scholarships for participating students.^{xi} Based on the previous and current research findings from existing tax-credit scholarship programs,^{xii} Education Freedom Scholarships will effectively reduce the federal government's annual tax revenue by \$5 billion and reduce opportunities for schools to implement research-based school improvement efforts for low-achieving students who remain in the public school system.

6) The Trump Administration's proposals for private schools to receive direct federal aid in the next COVID-19 relief package

Renewed calls for more direct aid to our nation's schools have prompted congressional action, ranging from a proposed \$90 billion for education in the House of Representatives' Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, to a \$430 billion proposal for education and childcare from Senator Patty Murray (D-WA) and Senator Chuck Schumer (D-NY). Regardless of where Congress lands on relief for education, however, the Trump Administration has proposed direct aid for private schools in the next stimulus package.^{xiii} The Administration's proposal is a one-time fund for state scholarship grants for students to attend private schools; this amount would be equivalent to 10 percent of the total allocation for state and local education agencies.^{xiv} In addition to the other federal funding streams being made available to private schools, 10 percent of the total amount allocated for public education in the next relief package would mean billions of dollars more for private schools.

Recommendations

As you continue deliberations toward the passage of another federal COVID-19 relief package, we strongly recommend that you deny the Trump Administration's requests to fund private schools with federal relief dollars. Additionally, we recommend that you nullify Secretary DeVos' revised equitable services interim rule and restore the originally codified, long-standing equitable services policy as stated in the CARES Act and the ESEA of 1965. We also recommend that you revise the restrictions for PPP recipients to prevent private schools from tapping into funds intended to support our nation's struggling small business owners. We also recommend that you close loopholes allowing Secretary DeVos to interpret intended uses for federal funding; this will limit the Secretary's ability to create discretionary microgrant competitions and funding guidance that will benefit private schools. Finally, we encourage you to fund K-12 education at a level of at least \$370 billion, as this is the minimum amount necessary to protect students and provide the fundamental instructional needs to meet 21st century demands.^{xv}

We believe that the ongoing push to fully reopen public schools for in-person instruction without adequate guidance or parameters in the fall during a pandemic suggests a lack of regard for public education on the part of Secretary DeVos. She and the Administration have also threatened to withhold critical funding for public schools if they do not reopen. In light of this, we urge you to consider our recommendations as you develop and pass another COVID-19 relief package for K-12 education. If you have any questions or would like to discuss these issues and our recommendations further, do not hesitate to reach out to SEF's Director of Government Affairs and Public Policy, Fred Jones, at fjones@southerneducation.org. Thank you.

Sincerely,



Raymond C. Pierce
President and CEO
Southern Education Foundation

Cc – Chairman Bobby Scott, Ranking Member Virginia Foxx, Chairwoman Nita Lowey, and Ranking Member Kay Granger

ⁱ SEF analysis of predictions from the Learning Policy Institute. <https://learningpolicyinstitute.org/blog/what-will-it-take-stabilize-schools-time-covid-19>.

ⁱⁱ Chandra, Sumit, Amy Chang, Lauren Day, Amina Fazlullah, Jack Liu, Lane McBride, Thisal Mudalige, and Danny Weiss. “Closing the K–12 Digital Divide in the Age of Distance Learning: Common Sense Kids Action.” Common Sense Media: Ratings, reviews, and advice, June 29, 2020. <https://www.common Sense Media.org/kids-action/publications/closing-the-k-12-digital-divide-in-the-age-of-distance-learning>.

ⁱⁱⁱ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 18005(a) (2020)

^{iv} CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools, Docket ID ED-2020-OESE-0091 § (2020).

^v “Louisiana CARES Act Equitable Share Estimates.” Education Week, 2020.

<https://blogs.edweek.org/edweek/campaign-k-12/Louisiana%20ESSER%20Nonpublic%20Equitable%20Share%20Based%20on%20ED%20Guidance.pdf>.

^{vi} Based on analysis from the Intercultural Development Research Association (IDRA) showing that ED’s new equitable services interim rule would lead to Texas’ private schools receiving \$38.6 million more in CARES Act funds than they would have otherwise.

^{vii} “Secretary DeVos Launches New Grant Competition to Spark Student-Centered, Agile Learning Opportunities to Support Recovery from National Emergency.” U.S. Department of Education, April 27, 2020. U.S. Department of Education. <https://www.ed.gov/news/press-releases/secretary-devos-launches-new-grant-competition-spark-student-centered-agile-learning-opportunities-support-recovery-national-emergency>.

^{viii} Brantley, Max. “Millions in PPP Money Flowed to Nine Arkansas Charter Schools, plus Many Private Schools.” Arkansas Times, July 8, 2020. <https://arktimes.com/arkansas-blog/2020/07/07/millions-in-ppp-money-flowed-to-nine-arkansas-charter-schools-plus-many-private-schools>.

^{ix} Eichensehr, Morgan. “McDonogh, Gilman among Local Private Schools to Nab over \$2M Each in PPP Funds.” Baltimore Business Journal, July 6, 2020. <https://www.bizjournals.com/baltimore/news/2020/07/06/baltimore-area-private-schools-nab-most-ppp-funds.html>.

^x Espinoza et al. v. Montana Department of Revenue et al. (Supreme Court of the United States June 30, 2020).

^{xi} “Trump Administration Unveils Plan for Historic Investment in America’s Students through Education Freedom Scholarships.” U.S. Department of Education, February 28, 2019. U.S. Department of Education. <https://www.ed.gov/news/press-releases/trump-administration-unveils-plan-historic-investment-americas-students-through-education-freedom-scholarships>.

^{xii} “Report On The Educational Credit For Exceptional Needs Children (ECENC) Program,” South Carolina State Legislature (SC Education Oversight Committee, 2019), <https://www.scstatehouse.gov/reports/EducationOversightComm/ECENC%20Annual%20Report,%202019.pdf>.

^{xiii} Chambers, Francesca. “Trump to Seek Funds for Private, Religious School Scholarships in COVID Recovery Bill.” Impact 2020. McClatchy Washington Bureau, July 2, 2020. <https://www.mcclatchydc.com/news/politics-government/white-house/article243956302.html>.

^{xiv} Ibid.

^{xv} DiNapoli, Michael A. “Making School Budgets Whole and Equitable During and After COVID-19.” Learning Policy Institute, July 17, 2020. <https://learningpolicyinstitute.org/blog/covid-making-school-budgets-whole-and-equitable>.