

**EXAMINING THE POLICIES AND  
PRIORITIES OF THE  
U.S. DEPARTMENT OF EDUCATION**

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**HEARING**

BEFORE THE

COMMITTEE ON EDUCATION  
AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

---

HEARING HELD IN WASHINGTON, DC, APRIL 10, 2019

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**Serial No. 116-17**

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Printed for the use of the Committee on Education and Labor



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WASHINGTON : 2020

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## **EXAMINING THE POLICIES AND PRIORITIES OF THE U.S. DEPARTMENT OF EDUCATION**

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**Wednesday, April 10, 2019,  
House of Representatives,  
Committee on Education and Labor,  
Washington, DC.**

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The committee met, pursuant to notice, at 9:02 a.m., in room 2175, Rayburn House Office Building. Hon. Robert C. “Bobby” Scott (chairman of the committee) presiding.

Present: Representatives Scott, Davis, Grijalva, Courtney, Fudge, Sablan, Wilson, Bonamici, Takano, Adams, DeSaulnier, Norcross, Jayapal, Morelle, Wild, Harder, McBath, Schrier, Underwood, Hayes, Shalala, Levin, Omar, Trone, Stevens, Lee, Trahan, Castro, Foxx, Roe, Thompson, Walberg, Guthrie, Byrne, Grothman, Stefanik, Allen, Smucker, Banks, Walker, Comer, Cline, Fulcher, Taylor, Watkins, Wright, Meuser, Timmons, and Johnson.

Staff present: Tylease Alli, Chief Clerk; Nekea Brown, Deputy Clerk; Ilana Brunner, General Counsel Health and Labor; Jacque Chevalier Mosley, Director of Education Policy; Mishawn Freeman, Staff Assistant; Christian Haines, General Counsel Education; Ariel Jona, Staff Assistant; Kimberly Knackstedt, Disability and Education Policy Advisor; Stephanie Lalle, Deputy Communications Director; Andre Lindsay, Staff Assistant; Max Moore, Office Aid; ; Veronique Pluviose, Staff Director; Benjamin Sinoff, Director of Education Oversight; Lakeisha Steele, Professional Staff; Katherine Valle, Senior Education Policy Advisor; Loredana Valtierra, Education Policy Fellow; Banyon Vassar, Deputy Director of Information Technology; Claire Viall, Professional Staff; Adrienne Rolie Webb, Education Policy Fellow; Cyrus Artz, Minority Parliamentarian, Marty Boughton, Minority Press Secretary; Courtney Butcher, Minority Director of Coalitions and Members Services; Bridget Handy, Minority Legislative Assistant; Blake Johnson, Minority Staff Assistant; Amy Raaf Jones, Minority Director of Education and Human Resources Policy; Hannah Matesic, Minority Director of Operations; Kelley McNabb, Minority Communications Director; Jake Middlebrooks, Minority Professional Staff Member; Brandon Renz, Minority Staff Director; Alex Ricci, Minority Professional Staff Member; Mandy Schaumburg, Minority Chief Counsel and Deputy Director of Education Policy; Meredith Schellin, Minority Deputy Press Secretary and Digital Advisor; and Brad Thomas, Minority Senior Education Policy Advisor.

Chairman SCOTT. The Committee on Education and Labor will come to order. I want to welcome everyone, and note that a quorum is present.

The committee is meeting today to examine the policies and priorities of the United States Department of Education. Pursuant to rule 7c, opening statements are limited to the Chair and Ranking Member. This allows us to hear from our witness sooner and provides all members with adequate time to ask questions.

I will now recognize myself for the purpose of making an opening statement.

Madam Secretary, I want to begin by expressing the committee's appreciation for your time today. The House rules require that each member is allotted a full 5 minutes for questioning, and we are grateful that you have allocated sufficient time to uphold that precedent.

The Department of Education bears the tremendous responsibility of implementing and enforcing Federal laws covering roughly 13,000 school districts and more than 50 million public school students. All of these students deserve an equitable high-quality public education. That is their right, and it is the responsibility of the Department of Education as well as Congress in partnering with States and localities to make it a reality.

Unfortunately, under the President's fiscal 2020 budget, it would be nearly impossible to meet that challenge. At a time when access to education is synonymous with access to opportunity, the President's budget proposes a 12.5 percent cut to the Department of Education.

These cuts are spread across vital programs that serve communities across the country. The budget, for example, weakens Title I-A, support for schools in low-income areas, it eliminates funding for after-school programs, and seeks a 40 percent cut in adult education.

The President's proposed cuts to higher education funding are particularly deep. Despite the rising cost of college and increasing burden of student debt, the budget seeks to slash over \$200 billion over 10 years, from student loan assistance. These cuts will deny countless students the personal growth and economic mobility that comes with a college degree.

The budget is more than numbers on a spreadsheet. There is a clear message in those numbers, and regrettably this is the same message the Department has been sending students, parents, and educators over the past 2 years.

Today's hearing is an opportunity to discuss the Department's actions and the justification for those actions under the present leadership.

This hearing is especially important given the Department's lack of transparency. The committee's ability to fulfill its oversight function, relies on a healthy working relationship with the Department.

When we ask reasonable questions, we expect responsive and timely answers. But on multiple occasions across several issues, the Department has refused to answer reasonable questions about its work and failed to provide adequate fact-based justifications for its actions.

For example, starting in September 2017 we repeatedly raised questions about the Department's failure to demonstrate effective oversight regarding the implementation of the Every Student Succeeds Act.

Specifically, the Department has approved State education plans that violate the law's requirements for schools to measure and address achievement gaps using subgroup performance. We have not yet received a substantial response to address these concerns.

In November 2017, we repeatedly asked the Department to answer questions about its refusal to faithfully implement the Borrower Defense Rule which has left more than 100,000 defrauded students waiting to restart their lives. We have not received substantive responses to those questions.

March 2018, we asked the Department to justify its decision to rescind the Obama era guidance addressing racial disparities in school discipline. Research has consistently shown that black students, boys, and students with disabilities face harsher discipline for similar offenses as their white peers. Instead of working with schools to correct these disparities, the Department used the tragic school shooting in Parkland, Florida as a basis to undermine students' civil rights protections.

By linking disparities in school discipline with school shootings, the Department is sending a terrible message that schools are safer when they discriminate against students of color. The Department has failed to adequately justify its rescission of this guidance.

In July 2018, we asked the Department to produce evidence supporting its effort to delay the equity in the IDEA Rule. This rule helps school districts address racial disparities and special education. We have not received a substantive response.

In fact, that lack of evidence recently led a U.S. District Court to rule that the delay was arbitrary and capricious and therefore unlawful.

In August 2018, we asked the Department to clarify its position on the use of taxpayer funds to arm teachers, which has left a dangerous opening for school districts to use Federal education funding to put firearms in classrooms. We have not received a substantive explanation of that position.

Since November 2018, we have been asking the Department to justify its reinstatement of the Accrediting Council for Independent Colleges and Schools, a troubled accreditor for for-profit colleges with a history of propping up low-quality schools.

The Department reinstated ACICS despite its own analysis that the accreditor had not met two of the required conditions for reinstatement. Two weeks after the reinstatement, another school accredited by ACICS abruptly closed, stranding nearly 20,000 students. We have not received an adequate response to those questions.

And in February 2019, we sent multiple inquiries to the Department about the apparently inappropriate effort by the deputy secretary to halt or influence the Office of the Inspector General in its investigation into the reinstatement of ACICS. This apparent intervention undermines the Inspector General's critical role as an independent watchdog. We have not received a substantive response to that inquiry.

And over the past 3 months we have asked the Department about its abandoned attempt to replace the acting Inspector General in the Department with the Department's own acting general counsel, a nearly unprecedented attempt to put a senior Department official in the position to police decisions he was personally involved in making. Once again, we haven't received a response to that question.

It is the—only the partial list of actions that your Department has failed to justify and questions it has refused to answer. Behind each of these unjustified actions and unanswered questions, there are students, parents, educators, and taxpayers across the country who are waiting for answers, and only can speculate as to the reason behind these actions.

They deserve to know why the Department is not acting in the best interest of faithfully executing the law or taking seriously the Federal Government's responsibility to make sure that all Americans have access to quality education, from childcare to early learning, to college and career.

So, Madam Secretary, I look forward to the opportunity to discuss the important issues under your Department which are so vital to our Nation's future.

And now I yield to the ranking member for the purpose of an opening statement.

[The statement of Chairman Scott follows:]

**Prepared Statement of Hon. Robert C. "Bobby" Scott, Chairman, Committee on Education and Labor**

Madam Secretary, I want to begin by expressing the Committee's appreciation for your time today. The House rules require that each Member is allotted a full 5 minutes for questioning and we are grateful that you've allocated sufficient time to uphold that precedent.

The Department of Education bears the tremendous responsibility of implementing and enforcing Federal laws covering roughly 13,000 school districts and more than 50 million public school students. All of these students deserve an equitable, high-quality public education. That's their right, and it's the responsibility of the Department of Education as well as Congress in partnering with States and localities, to make it a reality.

Unfortunately, under the President's Fiscal Year budget, it would be nearly impossible to meet that challenge. At a time when access to education is synonymous with access to opportunity, the President's budget proposes a 12.5 percent cut to the Department of Education. These cuts are spread across vital programs that serve communities across the country. The budget, for example, weakens Title I-A support for schools in low-income areas, eliminates funding for afterschool programs, and seeks a 40 percent cut to adult education.

The President's proposed cuts to higher education funding are particularly deep. Despite the rising cost of college and increasing burden of student debt, the budget seeks to slash over \$200 billion over 10 years from student loan assistance. These cuts will deny countless students the personal growth and economic mobility that comes with a college degree.

The budget is more than numbers on a spreadsheet. There's a clear message in those numbers and, regrettably, this is the same message the Department has been sending students, parents, and educators over the past 2 years.

Today's hearing is an opportunity to discuss the Department's actions and the justification for those actions under the present leadership.

This hearing is especially important given the Department's lack of transparency. The Committee's ability to fulfill its oversight function relies on a healthy working relationship with the Department. When we ask reasonable questions, we expect responsive and timely answers. But on multiple occasions, across several issues, the Department has refused to answer reasonable questions about its work and failed to provide adequate, fact-based justifications for its actions.

For example...

Starting in September 2017, we repeatedly raised questions about the Department's failure to demonstrate effective oversight regarding the implementation of the Every Student Succeeds Act. Specifically, the Department has approved State education plans that violate the law's requirements for schools to measure and address achievement gaps using subgroup performance. We have not yet received a substantive response to address these concerns.

In November 2017, we repeatedly asked the Department to answer questions about its refusal to faithfully implement the Borrowers Defense rule, which has left more than 100,000 defrauded students waiting to restart their lives. We have not received substantive responses to those questions.

In March 2018, we asked the Department to justify its decision to rescind the Obama-era guidance addressing racial disparities in school discipline. Research has consistently shown that Black students, boys, and students with disabilities face harsher discipline for similar offenses as their white peers.

Instead of working with schools to correct these disparities, the Department used the tragic school shooting in Parkland, Florida, as a basis to undermine students' civil rights protections. By linking disparities in school discipline with school shootings, the Department has sent a terrible message that schools are safer when they discriminate against students of color. The Department has failed to adequately justify the rescission of this guidance.

In July 2018, we asked the Department to produce evidence supporting its effort to delay the Equity in the I-D-E-A rule. The rule helps schools address racial disparities in special education.

We have not received a substantive response. In fact, that lack of evidence recently led a U.S. district court to rule that the delay was arbitrary and capricious, and therefore unlawful.

In August 2018, we asked the Department to clarify its position on the use of taxpayer money to arm teachers, which has left a dangerous opening for school districts to use Federal education funding to put firearms in classrooms. We have not received a substantive explanation of its position.

Since November 2018, we been asking the Department to justify its reinstatement of the Accrediting Council for Independent Colleges and Schools a troubled accreditor of for-profit colleges with a history of propping up low-quality schools. The Department reinstated A-C-I-C-S despite its own analysis that the accreditor had not met two of the required conditions for reinstatement. Two weeks after the reinstatement, another school accredited by A-C-I-C-S abruptly closed, stranding nearly 20,000 students. We have not received an adequate response to those questions.

In February 2019, we sent multiple inquiries to the Department about the apparently inappropriate effort by the Deputy Secretary to halt or influence an Office of the Inspector General investigation into the reinstatement of A-C-I-C-S. This apparent intervention undermines the Inspector General's critical role as an independent watchdog. We have not received a substantive response to that inquiry.

And over the past 3 months, we have asked the Department about its abandoned attempt to replace the acting Inspector General in the Department with the Department's own acting general counsel, a nearly unprecedented attempt to put a senior Department official in a position to police decisions he was personally involved in making. Once again, we have not received a response to that question.

This is only a partial list of the actions your Department has failed to justify and the questions it has refused to answer. Behind each of these unjustified actions and unanswered questions, there are students, parents, educators, and taxpayers across the country who are waiting for answers and only can speculate as to the reason behind the actions.

They deserve to know why the Department is not acting in their best interests, faithfully executing the law, or taking seriously the Federal Government's responsibility to ensure all Americans have access to a quality education, from child care and early learning to college and career.

Madam Secretary, I look forward to this opportunity to discuss the important issues under your Department, which are so vital to our Nation's future.

Now, I will yield to the Ranking Member for the purpose of an opening statement.

---

Mrs. FOXX. Thank you, Mr. Chairman, for yielding. And thank you, Madam Secretary, for being here. Today's hearing will provide members of the committee with a chance to hear about the Department's priorities, and what Department leadership is doing to provide greater opportunities to students at every level of education.

The committee Republicans are deeply committed to ensuring that all programs under the Department's jurisdiction are implemented effectively and help grantees and stakeholders provide students a high-quality, effective education. This has been an ongoing effort that I know Secretary DeVos is an equal partner in.

During the Obama Administration, the Department handed down a slew of regulations and Federal red tape that hampered programs. Since assuming office in 2017, Secretary DeVos has worked to reduce the regulatory burden on State and local leaders and has also worked to help provide flexibility where she can to help connect students with in-demand jobs.

Everyone here knows that we have a national skills gap problem. Currently there are more than 7 million open jobs across the country and the number of jobs they can see keeps growing. These jobs are going unfilled because not enough workers have the necessary skills to fill them.

There is a pervasive stigma around skills-based education, and my colleague can know it is long been a priority of mine to end this misconception.

A baccalaureate degree is not the only way to a good-paying job. There are a multitude of pathways to lifelong success and we need to work more to make skills-based education a viable and valuable path for people again.

So I am eager to hear about the Department's ongoing implementation of the Strengthening Career in Technical Education for the 21st Century Act. This committee's bipartisan legislation to reform career and technical education which the President has signed into law last July, the law will empower State and local leaders to engage with employers and connect more Americans with on-the-job learning opportunities, like apprenticeships.

I am also interested to hear about the Department's continued efforts to expand school choice for students, families, and teachers. Every student is different, and families should be empowered to choose the learning environment that best suits their child's strengths.

Many Republicans will always believe that a one-size-fits-all approach does more harm than good, and that is true most of all of education. Students deserve an education that challenges them to reach higher and inspires them to be lifelong learners.

Students deserve choices, and they have the best chance at lifelong success, if they have access to expanded opportunities at every level of education. congressional oversight of the executive branch is an important power of Congress, it is both necessary and appropriate to ensure that laws are properly implemented and taxpayer dollars are responsibly spent.

It behooves us to be thorough and exacting in our review of the Department's activities and budget request, but make no mistake thorough and exacting does not mean prejudiced and pernicious.

Secretary DeVos, you have been unwavering in the dedication to your job in the midst of strong headwinds. I want to assure you that Committee Republicans recognize the work you are doing to connect students with effective education. We are grateful for your efforts, and you can expect this side of the dais to ask questions



that shed light on the progress the Department has made since you were confirmed as Secretary, in your priorities moving forward.

Students of all ages and at every level of education should be empowered to pursue whatever education pathway will equip them with the unique skills they need to thrive in the workplace.

I thank Secretary DeVos again for being here today. I look forward to our discussion about how we can bring greater opportunities within reach for students across the country.

Thank you, Mr. Chairman.

[The statement of Mrs. Foxx follows:]

**Prepared Statement of Hon. Virginia Foxx, Ranking Member, Committee on Education and Labor**

Thank you for yielding.

Thank you, Secretary DeVos, for being here today. Today's hearing will provide Members of the Committee with a chance to hear about the Department's priorities and what Department leadership is doing to provide greater opportunities to students at every level of education.

Committee Republicans are deeply committed to ensuring that all programs under the Department's jurisdiction are implemented effectively and help grantees and stakeholders provide students a high-quality, effective education. This has been an ongoing effort that I know Secretary DeVos is an equal partner in. During the Obama Administration, the Department handed down a slew of regulations and Federal red tape that hampered programs. Since assuming office in 2017, Secretary DeVos has worked to reduce the regulatory burden on State and local leaders and has also worked to help provide flexibility where she can to help connect students with in-demand jobs.

Everyone here knows that we have a national skills gap problem. Currently, there are more than 7 million open jobs across the country, and the number of job vacancies keeps growing. These jobs are going unfilled because not enough workers have the necessary skills to fill them.

There's a pervasive stigma around skills-based education, and my colleagues know it's long been a priority of mine to end this misconception. A baccalaureate degree is not the only way to a good-paying job. There are a multitude of pathways to life-long success, and we need to work to make skills-based education a viable and valuable path for people again.

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Students deserve an education that challenges them to reach higher and inspires them to be lifelong learners. Students deserve choices, and they have the best chance at lifelong success if they have access to expanded opportunities at every level of education. congressional oversight of the Executive branch is an important power of Congress. It's both necessary and appropriate to ensure that laws are properly implemented and taxpayer dollars are responsibly spent. It behooves us to be thorough and exacting in our review of the Department's activities and budget request. But make no mistake, "thorough and exacting" does not mean prejudiced and pernicious.

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We're grateful for your efforts, and you can expect this side of the dais to ask questions that shed light on the progress the Department has made since you were confirmed as Secretary and your priorities moving forward.

Students of all ages and at every level of education should be empowered to pursue whatever education pathway will equip them with the unique skills they need to thrive in the work force. I thank Secretary DeVos again for being here today, and

I look forward to our discussion about how we can bring greater opportunities within reach for students across the country.

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Chairman SCOTT. Thank you. I will now introduce our witness. The Honorable Betsy DeVos serves as the eleventh U.S. Secretary of Education. She was confirmed by the U.S. Senate on February 7, 2017. She has been involved in education policy for nearly three decades, and an advocate for children and a voice for parents.

For 15 years she has served as an in-school mentor for at-risk children in the Grand Rapids public school system. Prior to her confirmation she served as Chair of the Windquest Group, an enterprise and investment management firm.

In addition to her leadership in the education arena, she has served on boards of numerous national and local charitable and civic organizations, including the Kennedy Center for the Performing Arts, Kids Hope USA, ArtPrize, Mars Hill Bible Church, and Kendall College of Art and Design.

She is a graduate of Calvin College in Grand Rapids, Michigan, where she earned a Bachelor of Arts degree, and she and her husband, Dick, have four children and seven grandchildren.

I am pleased to recognize our colleague from Michigan, Mr. Walberg, who is a close friend of the Secretary, and has asked to say a few words.

Mr. WALBERG. I thank the Chairman for that. And thank you for holding this hearing, inviting the Secretary to be with us. And indeed, we have made opening statements about education and our perception of it and, Madam Secretary, your predecessor, we certainly, from this side of the aisle, asked tough questions of the Secretary. And so that is to be expected.

But I appreciate the opportunity to welcome you here as a fellow Michigander. But also of having had a long-time experience with you and your family, your commitment in education, to have had the privilege of serving on an educational task force that you led and to see that words weren't just words but were backed up significantly with actions relative to quality education across the board. Whether it is public, private, parochial, any approach to education that allowed parents the choice to provide the best education for their kids you were involved with and promoted.

And I know as Secretary, you have the opportunity to lead in the Department, but also to give additional advice, ideas, some will be taken by the administration, others won't.

But always an effort to move forward, not be satisfied with status quo. Education is not a status quo place if it is true education.

And I thank you for your leadership there, your example. I have had the opportunity to meet students that you have impacted, students from all strata, that are students going on into engineering, students going on into healthcare, students coming from higher economic strata, students coming from lower economic strata, all receiving an educational opportunity that was unique, and built the opportunity for them for expanded success in their life.

So, I want my colleagues to understand, from a personal perspective, where you have come from, what you are looking for, and that you will work with us toward non-status quo education to meet the needs of the future.

Thanks for being with us. And thank you for allowing me this opportunity.

Chairman SCOTT. Thank you. Madam Secretary, I will remind you that your written statement has been distributed, it will appear in full in the hearing record pursuant to committee rule 7d and committee practice. You are asked to limit your oral presentation to about 5 minutes of your written statement.

You have testified here before so you know how the lighting system works, and after your testimony we will have questions for members. So, I will now recognize the Secretary of Education, Ms. DeVos.

**STATEMENT OF THE HONORABLE BETSY DEVOS, SECRETARY,  
U.S. DEPARTMENT OF EDUCATION**

Secretary DEVOS. Thank you, Mr. Chairman. Chairman Scott, Ranking Member Foxx, and members of the committee, thank you for the opportunity to testify on this administration's education priorities, which are also reflected in the President's Fiscal Year 2020 budget.

I thought it would be useful to begin by recalling Congress' commitment when it created the U.S. Department of Education 40 years ago.

Then Congress vowed that the move would "not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States," and I will add communities and parents.

Yet over the past 40 years, Federal taxpayers' spending on education has increased about 180 percent, amounting to over \$1.2 trillion cumulatively, and we are still 24th in reading, 25th in science, and 40th in math, when compared to the rest of the world.

Doing the same thing and more of it won't bring about new results. A great education shouldn't be determined by where you live, nor by who you know. It shouldn't be determined by family income, and education shouldn't be an old school, one-size-fits-all approach.

That is why I propose something different, freedom. This administration focuses on freedom for teachers, freedom for parents, and freedom for all students, because we recognize each as a unique individual and each should be treated as such.

Every child should be free to learn where and how it works for them—where and how it unlocks their potential, and so we propose a historic investment in America's students. Education freedom scholarships, our bold proposal will offer a dollar-for-dollar Federal income tax credit for voluntary contributions to 501(c)(3) nonprofit organizations that provide scholarships to students.

These students, their families, teachers, schools, States, all can choose to participate in the program, or they can choose not to participate. It is a choice, and since the proposal relies entirely on voluntary contributions to nonprofit organizations, it won't take a single dollar from local public schools, school teachers, or public school students.

Something else, education freedom scholarships aren't only for students who want to attend private schools. In fact, some States may choose to design scholarships for public school options, such as apprenticeships or transportation to a different public school.

States have the opportunity to be really imaginative and to serve the unique needs of their students. A proposal of an annual \$5 billion Federal tax credit for students draws a bright contrast to what some have proposed; \$100 billion for buildings versus \$5 billion for students.

This administration urges this body to invest in students. We believe students of all ages should be free to pursue the education that is right for them. That includes multiple pathways to higher education and successful careers. We propose to expand use of Pell Grants for quality short-term programs.

It is borne from a recognition of reality, the vast majority of students today do not pursue a traditional 4-year college degree, and there are millions of opportunities for careers that don't require university degrees.

We must urgently rethink our approach to higher education, because today Federal student aid holds \$1.5 trillion in outstanding loans, a number that continues to grow. More than total auto debt and credit card debt, 43 percent of those student loans are either in default, more than 30 days delinquent, or are negatively amortized, and taxpayers are on the hook for it all.

So we are putting the power of information in students' hands. They need open and easy access to information about institutions and programs in order to make better and more responsible decisions.

We are excited to expand the college scorecard, and the MyStudentAid mobile app to help do just that. We also propose consolidating numerous repayment plans, and raising the cap on our borrowers' monthly payment, 12.5 percent of discretionary income.

This is one way the Federal Government can become a more responsible lender. Policy should not entice students into greater debt, nor should they put taxpayers dollars at greater risk. Education freedom isn't just for parents and students either. Teachers need greater freedom as well. This administration seeks to empower America's teachers and elevate their profession.

I regularly meet with a number of excellent teachers who tell me they would like to choose their own professional development and customize it for their needs. To that end, we want to focus on what teachers find useful for themselves, not what is dictated by the district office.

These teacher vouchers treat teachers as the professionals they are. Teachers also tell me about the value of mentors or residency opportunities, so we want to help ensure new teachers have more opportunities to learn from the best.

It is also essential that teachers and students be safe at school. In the wake of tragic acts of school violence in our country, President Trump asked me to lead a Federal commission on school safety.

To support the commission's recommendations, we propose empowering communities to develop their own school emergency plans, and to focus on counseling and healthy behaviors for their students.

In the end, budgets are about priorities; ours are students, parents, teachers and taxpayers. If our country is to remain secure,

strong, prosperous, and free, we need students of all ages, who are prepared to pursue successful careers and lead meaningful lives.

Thank you, again, for this opportunity to testify. I look forward to your questions.

[The statement of Secretary DeVos follows:]

**DEPARTMENT OF EDUCATION**

**Statement by Betsy DeVos  
Secretary of Education  
Before the Committee on Education and Labor  
United States House of Representatives  
April 10, 2019**

Chairman Scott, Ranking Member Foxx, and Members of the Committee:

Thank you for the opportunity to testify on this Administration's education priorities and initiatives, many of which are reflected in the President's Fiscal Year 2020 Budget Request for the Department of Education.

The Department's mission focuses on coming alongside teachers and parents in their efforts to help each student pursue the education that works for them. This Administration is committed to improving student outcomes by expanding education freedom. We propose making targeted investments in such freedom for school leaders, for teachers, and for students and their families. The Budget would also expand the opportunity to use Pell Grants for high-quality, short-term training, enhance workforce development and career and technical education, and streamlining and improving student loan repayment.

Elsewhere in the President's fiscal year 2020 budget, the Administration is proposing a Federal tax credit to encourage voluntary contributions of up to \$5 billion each year for scholarships to elementary and secondary students. Here are three things the Committee needs to know about our Education Freedom Scholarships proposal.

First, it relies entirely on voluntary contributions to State-identified, non-profit organizations that give scholarships to students. So, the proposal does not divert a single penny away from public school teachers or public school students. It is merely a mechanism to empower families to choose the best educational options for their children.

Second, it is not a Federal program. States will control how to design their own programs. States will determine which students will be eligible, which educational providers can participate, how much scholarships should be, and every other detail.

Finally, the proposal is not just for students who wish to attend private schools. States can decide to use scholarships to expand public school options—such as career and technical education (CTE), apprenticeships, dual enrollment programs, or transportation to out-of-zone schools. We hope States will empower families to choose all options including private education, but I am also committed to letting States make their own decisions when it comes to their scholarship programs.

In the area of elementary and secondary education, the Budget request reflects our continued commitment to providing States and those closest to students with the resources and flexibility to ensure that students facing the greatest challenges can pursue a great education. In particular, we have protected funding for the key formula grant programs that support America's most vulnerable children. To supplement State efforts to support nearly 25 million low-income children, the Budget proposes \$15.9 billion for Title I programs—the same level as the fiscal year 2019 appropriation. And to help support local efforts to serve nearly 7 million students with disabilities, the Budget proposes \$13.2 billion for Grants to States under IDEA. That's the same level as the fiscal year 2019 appropriation, as well.

We are committed to expanding options for families, so that parents can find the best educational setting for their children. We propose investing taxpayer dollars in opening and expanding high-quality, public charter schools and for helping finance charter school facilities; public Magnet schools; and districts that participate in a student-centered funding pilot that will

help districts transition to transparent funding systems where funding follows students, not buildings.

We also seek to empower teachers and elevate the teaching profession. Specifically, we propose a demonstration project under the Education Innovation and Research program that would provide individual professional-development stipends, or “vouchers,” that would replace district-driven professional development activities with those that empower teachers to select training opportunities tailored to their individual needs and those of the students they are serving. In several conversations and roundtables I’ve recently hosted with a number of teachers, they consistently criticize the quality of the professional development programs they are forced to attend. These stipends will free teachers to study and learn what they know will most benefit themselves and their students—not what’s dictated to them by the district office.

The proposed Budget also reflects our focus on supporting the expansion of quality teacher mentoring and residency programs. Many of the teachers I’ve met have spoken with great passion about the important role that quality mentors and residencies have played in helping them improve their knowledge and skill and become excellent instructors. Those who weren’t so lucky describe how ill-prepared they were for the classroom. We want to test whether good mentors and residency programs can cost-effectively improve both teacher induction and retention while creating compensated leadership opportunities for the best teachers. The proposal would also encourage increased recruitment and retention of effective educators in high-need subjects such as STEM and computer science.

This Administration is committed to ensuring that students are able to learn in safe and secure educational environments. The Budget includes approximately \$700 million, an increase of \$196 million compared to 2019, for grant programs in the Departments of Education, Justice,



and Health and Human Services, to give States and school districts resources they need should they choose to implement recommendations of the Federal School Safety Commission, which I co-chaired. The Department of Education is proposing a \$100 million School Safety State Grant program that would help build State and local capacity to identify and address the wide range of school safety and student health concerns authorized under Title IV-A. Our request also would maintain support for School Climate Transformation Grants, Project Prevent, and Mental Health Demonstration Grants that we will award later this year.

We also support students in continuing their lifelong learning journeys by investing in career and technical education, promoting multiple pathways to successful careers, and streamlining and improving Federal student aid programs. The Budget also continues support for Federal programs that help prepare low-income and minority students for postsecondary education and strengthen postsecondary institutions serving large proportions of minority students. These proposals support recent congressional efforts to modernize and reauthorize the Higher Education Act to be responsive to the needs of both students and employers.

Specifically, the Budget requests \$1.3 billion for Career and Technical Education State grants, which help ensure students have access to CTE opportunities in high school as well as a wide array of postsecondary options including certificate programs, applied associate degree programs, and apprenticeships. The Budget also includes \$20 million for CTE National Activities to help students enter careers in STEM-driven and information technology-related programs, such as advanced manufacturing, biotechnology, engineering technology, allied health and mechanics. The Budget includes \$60 million under Adult Education National Leadership Activities to support State efforts to create pre-apprenticeship programs that increase the number of adults who are able to meet the basic entrance requirements of apprenticeship programs. We

have heard from too many employers that they want to provide apprenticeship opportunities, but cannot find interested participants who have the underlying math, science and reading skills they need to succeed.

There are many paths to successful careers, and federal student aid programs should be flexible enough to support students on the path of their choice. And so, the Budget would expand Pell Grant eligibility to include high-quality short-term programs, helping more Americans access education programs that can prepare them for well-paying jobs in high-demand fields more quickly than traditional degree programs.

The 2020 Budget would also reform campus-based programs by focusing limited resources on bolstering effective workforce development opportunities for students with the most need. The Budget proposes to reform the Federal Work Study program to support workforce and career-oriented education opportunities for low-income undergraduate students, rather than subsidizing on-campus employment, so that low-income students are engaged in work experiences while in school that will lead to higher-paying jobs when they graduate.

Our proposal also ends the practice of diverting the largest portion of campus-based aid to the institutions that need it least and serve the fewest high-risk, high need students. Our proposal allocates funds to schools based on enrollment of Pell grant recipients, rather than their historical participation.

Importantly, we propose to improve student loan repayment by consolidating multiple Income Driven Repayment (IDR) plans into a single plan. This is urgently necessary because at almost \$1.5 trillion, Federal Student Aid's loan portfolio is the largest consumer loan portfolio in America—larger than J.P. Morgan and Bank of America. And 43 percent of those student loans

are at risk. Meaning, the borrowers are in default, more than 30-days delinquent, or negatively amortized. Another 20 percent of loans are in forbearance or deferment.

In order to effectively implement the student aid programs, we are pursuing an innovative strategy to deliver Federal student aid services and information to our customers, and the Budget includes strong support for this initiative. Next Gen FSA, will create an improved, world-class customer experience for FSA's millions of customers, while creating a more agile, flexible model that will streamline FSA's existing operations. The key to the Next Gen FSA transformation will be a comprehensive, FSA-branded customer engagement layer that will create an environment where the Department's customers will receive clear, consistent information and readily accessible self-service options at every stage of the student aid lifecycle, something I think we can all agree is worth supporting. The numerous IDR options currently offered to borrowers overly complicate choosing and enrolling in the right repayment plan, and provide disproportionate benefit to students who complete expensive graduate education, but are more likely to enjoy higher earning potential over their lifetime.

The proposed single IDR plan would cap a borrower's monthly payment at 12.5 percent of discretionary income. For undergraduate borrowers, any balance remaining after 15 years of repayment would be forgiven. For borrowers with graduate debt, any balance remaining after 30 years of repayment would be forgiven. We also propose auto-enrollment for severely delinquent borrowers and institutes a process for borrowers to consent to share income data for multiple years to reduce the burden on an individual borrower to submit forms and proof of earnings. To facilitate these improvements and to reduce improper payments, the Budget proposes to streamline the Department's ability to verify applicants' income data held by the Internal Revenue Service. This improvement would also make it easier for students to complete their

FAFSA application and would reduce the added burden to institutions when they are asked to provide additional verification of student eligibility.

To further simplify the student loan program and take the government out of the business of picking winners and losers among students who may have the same debt and earn the same salary—simply because their employers have a different tax status or their parents had different earnings—we propose eliminating Public Service Loan Forgiveness (PSLF) and Subsidized Stafford Loans for new borrowers. The PSLF program is not only complicated for borrowers to navigate, mostly because of how the program was designed when it began in 2007, but it uses taxpayer resources to encourage students to take jobs based on the tax-status of their employer, rather than on a student's unique talents or local workforce needs.

The subsidized loan program provides an after-the-fact benefit that doesn't help students complete their program and does not take into account borrower earnings in their chosen profession. It sends the wrong message to suggest to students that just because their parents were low-income, they will be too. Instead, we propose to support all borrowers pursuing any career through the Single IDR plan which will allow borrowers to make affordable monthly payments based on their income.

The Budget also supports important investments in the academic quality, institutional management and capacity, infrastructure and student support services for Minority Serving Institutions (MSIs) and Historically Black Colleges and Universities (HBCUs). Specifically, the Budget proposes to improve grantmaking by consolidating six MSI programs into a \$148 million formula grant, which will provide funds the institutions can rely on as well as improve program management efficiencies. In recognition of the extraordinary contribution provided by HBCUs,

the Budget includes \$626 million for programs that provide funding to help these institutions strengthen their capacity to provide the highest quality education.

Our priorities, and this Budget, reflect our commitment to spending taxpayer dollars wisely and efficiently while supporting our Nation's students of all ages. Because that's who budgets are for—students. If this country is to remain secure, strong, prosperous, and free, we need students who are prepared to pursue successful careers and lead meaningful lives.

Thank you for this opportunity to testify. I am happy to respond to any questions you may have.

Chairman SCOTT. Thank you. We will now have questions. And I will begin. I recognize myself for 5 minutes.

Madam Secretary, in December 2018, you rescinded the Rethink Discipline guidance package. That guidance package clarified school districts' obligations and the Department's enforcement of Title VI of the Civil Rights Act. The guidance also provided useful information to districts on how they can proactively reduce racial disparities and rates of exclusionary discipline without jeopardizing school safety.

Lacking evidence to support the rescission, the Trump administration turned its attention to the Parkland, Florida, shooting, blaming that tragedy on the school discipline guidance and the use of disparate impact theory to enforce Title VI.

As articulated in the final report of Federal Commission on School Safety, the administration Stated that enforcement of Title VI using disparate impact analysis "lacks the foundation and applicable law."

And my question is, has the Trump administration abandoned the use of disparate impact analysis in Title VI enforcement?

Secretary DEVOS. Thanks, Mr. Chairman, for that question. I know this is an issue about which we have spoken in your office, and I am glad to address it again.

The Department continues to enforce disparate—the regulation that you have articulated, and will continue to do so until and unless the regulations changed.

Chairman SCOTT. And so the "lacks foundation in applicable law" was a misstatement?

Secretary DEVOS. Well, no, I think that is certainly a discussion and continues to be looked at and studied by both our agency and other agencies that are both, they will be charged with that.

Chairman SCOTT. As you pointed out, the disparate impact analysis is legal and required under Title VI in the regulations?

Secretary DEVOS. Yes. We continue to enforce as it has been regulated to date.

Chairman SCOTT. Yesterday we learned the Department has entered into a resolution agreement with Texas Tech Medical School that requires the school to cease use of race in admissions. And now Texas Tech is mourning their loss to the University of Virginia in the Final Four. But in this, how many similarly situated cases are there involving race and college admissions that the OCR has active now?

Secretary DEVOS. Well, let me first address the case that you have cited. As you know this was a 14-year-old case, and Texas Tech Medical School had voluntarily entered into the resolution agreement. I know that there are at least a couple of other active cases that the Office for Civil Rights is involved with today. And those will continue to be investigated.

Chairman SCOTT. What are we doing to increase the number of—since this is the medical school, you are aware that there are fewer African-American men in medical school now than in 1978, there is a disparity, a significant lack of African-American men, what is the administration doing to increase the number of African-American men in medical school today?

Secretary DEVOS. Well, from the Department's perspective we are continuing to follow the Supreme Court's guidelines around use of different measures in admissions, and we will continue to do so. We acknowledge that it is a desirable goal to have a very diverse population in every educational setting.

Chairman SCOTT. and so what is the administration doing to increase the number of African-American men in medical schools?

Secretary DEVOS. Well, I don't think that we have an offensive measure to try to do. It is certainly up to different institutions to both follow the Supreme Court rulings in this matter, and also to follow their own mission of their schools.

Chairman SCOTT. That means you are doing nothing?

Secretary DEVOS. It means that we are following the laws that we are charged with following, and we will continue to do so.

Chairman SCOTT. Thank you. Ranking Member, Dr. Foxx?

Mrs. FOXX. Would you please recognize Mr. Guthrie?

Chairman SCOTT. The gentleman from Kentucky, Mr. Guthrie.

Mr. GUTHRIE. Thank you. I appreciate the courtesy. I appreciate it very much. Secretary DeVos, I know we have talked together about the Education Freedom Scholarship Act. And one of my just concerns about how I would like to hear it explained in that program, I know, in Kentucky, cities like Louisville and other cities have a robust private education system, so if there is a child in a school district, the stress, they would have access to this, they have readily access to a private school that is functioning and is there, and is moving forward.

A lot of my counties in Kentucky are very rural, so the public school would be the only option, even if they had access to funds to do something different it would be the only option currently. I mean, that may change if that was the case.

So, could you explain how this program would help students rural—not just rural Kentucky, but rural America that don't have the separate infrastructure in place?

Secretary DEVOS. Sure, I'd be happy to. This is a really great opportunity for all States and all sorts of communities to really tailor make options and choices to the students that they're serving. And I think about rural communities in particular where a small school might not be able to offer the range of courses that their students might like to access.

So one of the opportunities would be course choice to take a very high-quality course via the internet with a highly qualified teacher somewhere in the world and to do so as a one-off as a student.

Another possibility would be for if there are several students within that rural school for whom a different type of learning would be appropriate, they could basically form a micro school housed within that same building that would approach learning in a different manner.

I also think about possibilities around career and technical education and perhaps several communities would join together and offer some robust career and technical opportunities and maybe there is transportation scholarships for students to get to that opportunity along with that specific opportunity itself.

So there is really limitless ideas that you could come up with to really tailor make your—the education options for the students that you are serving.

Mr. GUTHRIE. So your vision, this isn't a voucher in your hand to go show up to a private school and help pay your private school tuition, there is just as you said a limitless use of these funds for great opportunities for every—a lot of children, young people.

Secretary DEVOS. Right. I really think we should think very broadly about what choices we are talking about and not get reflexive and talk about, you know, some immediate reaction to what school choice is.

I think we can think very broadly about offering the different kinds of opportunities to students that need something different or want something different and this is a great and historic opportunity to come in alongside what is already happening in States and augment it with some new opportunities.

Mr. GUTHRIE. One of the exciting things I have changing subjects is and I think that it is almost everybody sitting here today are looking at apprenticeship programs. They want apprenticeship programs to be successful where people can earn a good middle class income when they don't have to have the big debt from going to 4 years of school if the 4-year school is not appropriate access and there are other alternatives.

I know that we have talked about apprenticeships and could you talk about your view of apprenticeship programs and how the Department can help us in our legislation to make sure people have these opportunities?

Secretary DEVOS. Well, we have talked a lot about apprenticeships and I think that there is almost unanimity around this notion that more students need to have the opportunity to both earn and learn.

And I think about a student that I met a couple of months ago, Isabel, who went to school in Minneapolis and started an apprenticeship while she was in high school, decided to continue on. At age 21 she has—she owns her own home, she owns her own car. She has a 401(k) and her own healthcare plan and she has now been offered a job to move with that company to Switzerland. And, you know, that is the kind of situation more students need to be able to access.

So the President's budget proposes a pre-apprenticeship opportunity at the level of \$60 million. Of course the whole Perkins Act, Perkins Reauthorization, helps move more opportunities into apprenticeship programs and the Department of Labor is working very hard on introducing some new opportunities around apprenticeships as well but this is a very broad opportunity that I think needs to be seized.

Mr. GUTHRIE. Well, thank you. Thank you for being here and we hope to all seize it. I think it is bipartisan for sure here. So thanks and thanks for the courtesy and I appreciate it and I yield back.

Chairman SCOTT. Thank you. The gentelady from California.

Ms. DAVIS. Thank you. Thank you, Madam Secretary, for being here. Madam Secretary, you mentioned that students are saddled with debt. I think everybody would be nodding their heads over



that. As we know, thousands of students are reporting complaints about the Department's contracted loan servicers to the Consumer Financial Protection Bureau.

Five weeks ago, Senator Murray, ranking member of the Senate HELP Committee, and I sent a request for information related to the scathing Office of Inspector General report that detailed the Department's failure to oversee its loan servicing contractors. And today we haven't received any responses to those questions.

So I wanted to ask you, you know, whether—when we are going to receive that?

Secretary DEVOS. Well, thanks for the question, Congresswoman. The Department does take very seriously its commitment to students and are very committed to serving them well.

In fact, the Federal student aid most—more recently took over \$2 million from our services, our servicers, and we have recently communicated through a letter concerned—

Ms. DAVIS. Could I ask you, Madam Secretary, can you commit to 2 weeks that we might have that report? We might have your responses to that?

Secretary DEVOS. I certainly will hope that we can get it in 2 weeks. It depends on the level of data that is necessary to complete it. We have been trying to be very responsive to all the requests from members of this committee and Members of Congress and—

Ms. DAVIS. Yes. Is there—I guess for all of us, we are just wondering—

Secretary DEVOS. Ninety-three percent of our—93 percent of the over 1,000 letters that we received in—since I have been here have been responded to and we continue to be very, try to be very diligent about answering the request for information.

Ms. DAVIS. So I think just to have a ballpark in terms of, for these kinds of requests, that we make through the Department, what is a reasonable timeline?

Secretary DEVOS. Again, I think it is reasonable for us to respond promptly. If it requires the compilation of a lot of data that takes a lot of time and resources to do, it may take longer than either you or I would like.

But I am—I give you my commitment that we will do our best to respond as promptly as possible.

Ms. DAVIS. Okay. I wanted to go on then and talk about what the Department has said publicly about that report because it was scathing, as you probably saw. The Department—your Department asserted that it has made significant ongoing improvements to its oversight and monitoring policies and procedures since the review period of the OIG's report.

So what are the significant improvements to oversight and monitoring that have been implemented since October 1 of 2017?

Secretary DEVOS. Well, I just mentioned that just in the last year and a half, we have reserved over \$2 million from our vendors. We have been in constant communication where there have been issues raised and we will continue to monitor the servicers to make sure they are upholding the agreements that they have made on behalf of the students that they are communing with.

Ms. DAVIS. What could you add to that for the students that are there, they are listening even today and wondering, you know, what is going to change for them?

Secretary DEVOS. Well, we have as you probably know a very forward leaning next gen initiative to modernize the whole student financial aid framework which has been a patchwork of, you know, confusion for students over the years.

I have learned that the average number of loans a student holds is 4.6 and they are most often with different servicers.

Ms. DAVIS. Yes. Well, I think—

Secretary DEVOS. So it becomes very confusing for students to try to manage and pay back their loans when they are having to deal with multiple different services.

Ms. DAVIS. Thank you. Madam Secretary, could you tell students that there are going to be more audits of these servicers? What is it, again, that is going to go into greater depth for them? Because next gen I think is evolving, but we are not there yet. You are not there yet even in terms of managing that, so I think we need to be really ready to give them a better response.

I know that people are certainly wondering why this is such an important report. I think it is because, in fact, the Department has this oversight responsibility for Federal student loans and we want to be sure that these claims are being addressed.

I also wanted to mention that, you know, you are talking about oversight, but I think the students are really wondering if the 5,300 complaints mean something that folks are out there and they are not able to work.

So, I mean, our bottom line is that there are millions of students and more who have completed higher ed degrees and are suffering from this crushing debt. And so we want them to feel that they can count on you, they can count on the inspector general to do these kinds of reports and then we need to have the kind of response back.

So I thank you for that. We will look within a short amount of time I hope for those responses. Thank you.

Chairman SCOTT. Thank you. The gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman. And again, thank you, Madam Secretary, for being here. Just to followup a little bit on the Education Freedom Scholarships. They are tax credits, not vouchers.

Secretary DEVOS. That is correct. The proposal is a Federal tax credit that individuals or corporations would be able to contribute to and States would decide whether they wanted to participate or not.

If they did, they would be able to craft their own program or programs to meet the needs of students in their States and give them choices, additional choices to what they have today.

Mr. WALBERG. So not mandatory. Voluntary opportunity to use—

Secretary DEVOS. Indeed.

Mr. WALBERG [continuing]. a person's own funds—

Secretary DEVOS. Exactly.

Mr. WALBERG [continuing]. to make sure that the kids have the opportunities. I was delighted to hear your answer to Representative Guthrie on the issue of a career and technical education.

Just came from a hearing earlier where associated general contractors put out a couple numbers: 286,000 shortage of construction workers this past February, the most recent figures. And that the average wage in construction now is \$30 an hour. The average wage.

And these professional trades are truly professions that can provide a wonderful life and great opportunity without having that overweening student debt that is coming.

Also, it has been exciting in meeting with some of our more forward thinking colleges and universities that are coming up with ideas that will reduce potentially 30 percent of tuition costs as a result of working with business and industry and allowing actual business industry to set up curriculum programs and work with pay for the setting up of those curriculum programs that meet the needs of the real world jobs that are out there now. And that doesn't happen without having flexibility.

But we still have. We still have student finance issues and last year I introduced the FASFA Act along with Representative Delbene of Washington, which would streamline and simplify the financial aid process.

In March, this committee held a hearing on college affordability. During that hearing the president of Western Carolina University testified how the FAFSA form can act as an insurmountable obstacle to students in obtaining Federal aid, particularly for first generation and low-income families. Could you describe how the FAFSA Act would simplify and improve the FAFSA process for students as well as families?

Secretary DEVOS. I would be happy to, Congressman. And I think often of the FAFSA form that Senator Alexander likes to regularly unfurl and the goal to dramatically shorten that form and make it much easier for students apply for Federal student aid.

As you know, we have introduced the MyStudentAid mobile app which they, you know, the naysayers said couldn't be done and wouldn't be done. It was done and it was done on time. Students can now complete their FASFA on their smartphones. If the 6103 exemption at legislation which was passed by the Senate is taken up and passed by the House as well, that will dramatically shorten the number of questions on the FAFSA form.

And then I know that there is the legislation that you have introduced and are championing would also eliminate a number of additional questions that are really not necessary. And that combination I think is a really important move to make it much smoother and simpler for students who have to apply for Federal student aid on a regular basis.

Mr. WALBERG. On the side of the universities, how would it benefit them with this simplified process? I have read statistics that 30 percent of FAFSA applications must undergo an income verification process.

Secretary DEVOS. Right. Well, it would eliminate that process because it would—the information would be drawn directly from the IRS on student and family income and it would greatly secure

that data as well. Because right now it goes through a number of steps and it is a—at much greater risk.

So that combination would dramatically reduce the burden on institutions on the verification process.

Mr. WALBERG. Well, I appreciate that. See the time is expiring here. I yield back.

Chairman SCOTT. Thank you. The gentleman from Arizona, Mr. Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman, and thank you, Madam Secretary, for being here. You know, last year my home State, Arizona, was among several that experienced teacher walk-outs, strikes, primarily citing working conditions and primarily citing teacher pay among the reasons that they took the actions that they did.

I think we know that our Nation's educators are grossly underpaid. It varies from State to State. Some States do not provide the support in terms of teacher salaries or have significantly moved to improve teacher salaries.

We can make the comparisons to other professionals with the same education and technical requirements, teachers are grossly underpaid, classroom teachers are.

And I mention this and ask you, Secretary DeVos, conceptually do you believe that Federal—that the Federal Government should have—find ways to supplement public school teacher incomes?

Secretary DEVOS. Well, Congressman, our budget has a couple of proposals to really focus in and elevate the profession of teaching and to honor and respect teachers for the professionals they are.

And to give them more opportunity to control their own destinies in the form of their own professional development through the teacher voucher program and then also with the mentorship and residency program that, you know, today I have heard from so many teachers that they have—they feel obliged almost to move in consideration and leave the classroom when they mostly love being in the classroom, but in order to continue to develop—

Mr. GRIJALVA. But—

Secretary DEVOS [continuing]. themselves—

Mr. GRIJALVA [continuing]. particularly would that respect for teachers be translated—do you think—could be translated into their paycheck?

Secretary DEVOS. Well, obviously teachers and their—the States and local communities have the most direct input into that, but I think we can and should find ways to ensure that teachers have more autonomy and more freedom to do what they do best and that is to serve students in their classroom and for great teachers to have the opportunity to teach others.

Mr. GRIJALVA. I think my point is that I think they should get more pay and that in doing so is there a role for the Federal Government to help supplement, not supplant, but supplement, the income for school classroom teachers? That is a discussion for some other time.

You know, Basis Charter Schools Incorporated, which is big in my State of Arizona, is privately owned and nearly all of its funding comes from State and Federal tax dollars. There are oversight

questions related to their financial sustainability and its administrative costs.

Charter schools like Basis tried to expand as quickly as possible which you have Stated you support. Despite all the fiscal red flags and in Basis' case, while they might be profiting outside my State, their in-State operation posted a primitive deficit of \$49 million.

This story has been played out in Arizona, California, Texas, here in Washington, DC. The lack of oversight on charter school finances has demonstrated significant waste of taxpayer dollars.

In your budget proposal, despite numerous cuts to important program like Gear Up and Impact Aid, you are requesting \$60 million for the charter school program. Given what I just said, how do you justify that?

Secretary DEVOS. Well, Congressman, there are over 1 million students on waiting lists for charter schools nationally; over 11,000 right here in the District of Columbia. One in eight students in Washington, DC, wants to get into a charter school and cannot; more than 50,000 in New York City. So—

Mr. GRIJALVA. Okay. I—

Secretary DEVOS [continuing]. charter schools provide great opportunities for lots of students and there is clearly a lot of demand for more of them.

Mr. GRIJALVA. Okay. Then let me then give you some examples. Because one of the questions is also about monitoring and oversight of charter schools as they are receiving significant and sometimes their only source of financial support comes from State and Federal Governments.

How is your Department monitoring charter schools? You know, program grant funding to awardees that never open, open and close within an academic year, or never open again for the second academic year.

How are we monitoring and what kind of oversight is being done to make sure that if those are anomalies that those anomalies occurred at all. But they continue to occur, situations keeps coming up and the issue of monitoring and oversight continues to be a pressing question and I want to know what direction the Department is going on that given the expansion of support for charter schools?

Secretary DEVOS. Well, charter schools are authorized by the States in which they reside and the programs in which the Department interacts with clearly has agreements and has oversight over those particular pieces of the program. But they are authorized within the State.

And we know that there have been charter schools that haven't been able to make it and have closed down and that is good and that's appropriate. If they can't serve students well, they shouldn't exist. The same should be true of traditional public schools if they can't operate well.

Chairman SCOTT. The gentleman's—

Mr. GRIJALVA. Thank you very much.

Chairman SCOTT. Thank you. The gentleman from Georgia, Mr. Allen.

Mr. ALLEN. Thank you, Mr. Chairman, and thank you, Madam Secretary, for taking on this challenge of education and know that

it has been in your courage to take on this challenge because, you know, it is very, a complex issue.

You know, coming from the business world, specifically construction, I know about the shortage of workers.

In fact, everywhere I go in my district we have a shortage of workers. And so it is putting tremendous pressure on our education system and of course in our State, I think out of a—out of the budget, over 50 percent of the money goes to education.

I know in our county, over 50 percent of the money goes for education and so it is—and then you look at the statistics and you look at the last 20 years where the cost has gone from 6,000 to 11,000 per student. Yet teacher salaries have not really increased so you wonder, well, where is the money going? And I am sure you are looking into all that and you have been an outspoken supporter of expanding the choices in education and I support your efforts in that because every student is different.

Every students needs are different and we need to do everything we can in our communities to meet those needs. Could you tell us a little bit more about your—you know, how you envision your proposal to for the education innovation and research program under the Every Student Succeeds Act and how it works and why you feel it is important?

Secretary DEVOS. Well, thanks, Congressman. Yes, this is actually our proposal to help teachers guide and control their own professional development. And the proposal is really a pilot program to establish teacher vouchers that teachers would be able to pursue their own professional development. And I think about, you know, different opportunities an early stage teacher might have to take development that would help them with classroom management for example. Perhaps a middle stage teacher wants to get better at the subject matter they are teaching. And maybe a later stage teacher is really good at teaching other teachers and will pursue a mentorship or residency program to help new teachers learn to be better teachers.

So it would be—the proposal would be meaningful amounts for teachers to be able to elect to pursue whatever is right for their own personal and professional development at the stage of teaching that they happen to be.

Mr. ALLEN. Okay. Are you familiar with the—where we are as far as the teacher shortage in the country right now? I mean, I know we have one in our State. Is it pretty much nationwide?

Secretary DEVOS. Well, I know that there is certainly challenges to recruiting teachers in certain subject areas. I know that States are getting creative about how they attract teaching new teachers into the profession and there is different approaches to certifying them.

I also know that there is in rural areas where it is particularly difficult, they are being—you know, becoming very creative about how they really meet the needs of students without necessarily having to hire a full-time teacher for a specific class that doesn't have many students.

Mr. ALLEN. Yes. We are making great strides in Georgia on our graduation rates and what not but on the Strengthening Career

and Technical Education for the 21st Century Act, obviously we need to accelerate movement of students into the workplace.

And thank you for you sort of explained what you're trying to do there as far as implementing this law. Anything you would like to comment further on initiatives that now that you have kind of heard a little bit of what we are talking about here today. Anything else you would like to add to that?

Secretary DEVOS. Well, I think it is a great opportunity for States to look anew and communities to look anew at what the real needs are in their communities and for employers to really explicitly partner with educators to collectively design programs to meet the broader needs of their region and their communities.

And places that I visited that have been particularly effective at this are doing really well with filling the needs of the employers and the opportunities in the area but there is still room for a lot more development, a lot more improvement in that area.

Mr. ALLEN. Well, thank you again very much. And I yield back.

Chairman SCOTT. Thank you. The gentleman from Connecticut, Mr. Courtney.

Mr. COURTNEY. Thank you, Mr. Chairman. Thank you, Madam Speaker, for being here today. I just want to followup on my colleague, Congresswoman Davis, regarding the OIG report among servicers.

Again just for the record, the OIG found 61 percent noncompliance by loan servicers in most basic functions in terms of, you know, not recording payments from student borrowers, reporting them to credit agencies inaccurately which is like going into credit hell when that happens for student borrowers.

And again, I mean, that is an appalling rate. And I would ask, Mr. Chairman, that the OIG report be admitted to the record.

Secretary DEVOS. Congressman, if I could just—

Mr. COURTNEY. Actually let me just do this first. Okay, and then I will have a question for you, I promise.

Chairman SCOTT. No objection.

Mr. COURTNEY. Thank you, Mr. Chairman. So not only are we seeing again this kind of batting average, poor batting average by the Department regulating loan servicers, under your leadership you have taken numerous steps to undermine State enforcement of student borrower protections.

Last December, without any public notice, your Department issued a memorandum barring loan servicers from releasing information to State law enforcement officials.

And again, Mr. Chairman, I would ask unanimous consent to enter a memo sent by the Department to all loan servicers into the record.

Thank you. So this memo has had the effect of undermining all State investigations into shady practices as well as Federal investigations by the Consumer Financial Protection Bureau into loan servicers.

Brazenly the Department did not even publicly notice this memo and it was only obtained because someone at the Department leaked it. So I want to ask, given the fact that State law enforcement has had a spectacular record of success in terms of getting restitution for student borrowers who again had their funds mis-

appropriated, shutting down deceptive practices and again as the New York AG, Minnesota AG, Illinois AG, Connecticut AG, I mean, they have all been doing this work collaboratively with the Federal Government, what is the rationale for the Department to shut off that flow of information regarding student loan servicers which has been standard operating procedure for decades?

Secretary DEVOS. Congressman, first let me comment on the OIG—

Mr. COURTNEY. See I asked you a question and we don't have much time, so could you just sort of explain—

Secretary DEVOS. I understand, but that—

Mr. COURTNEY [continuing]. what the—this is a decision you made to shut off this information to people who are law enforcement. They are investigating things like fraud. I mean, so please explain that decision in that memo.

Secretary DEVOS. I will be happy to, but I want to comment to the OIG report.

Mr. COURTNEY. I didn't ask you about that.

Secretary DEVOS. All the findings of which we have all—we have addressed. They were for a period of time that, you know, that was—it was from a long period of time ago. They have been addressed.

With regard to the loan servicers and State involvement, Federal student aid is a Federal program and to involve every single State in a separate oversight capacity really preempts—

Mr. COURTNEY. So again—

Secretary DEVOS [continuing]. Federal—

Mr. COURTNEY. So preemption does exist. There is no question about it. When Congress acts, like ERISA, we preempted State regulation of insurance back in the 1970's by an act of Congress.

In terms of student loan servicing enforcement, Congress has never preempted that away from attorney generals who are just simply doing—enforcing in many instances their own State consumer protection laws.

So, you know, again, that decision that you made with—again, without giving even the courtesy of a notice and had to be sort of found out indirectly, again is not certainly with the imprimatur of Congress.

So in addition, you know, to sort of ignoring law enforcement who has been doing a great job in terms of protecting student borrowers in the 2019 appropriation by Congress we directed the Department to respond to all requests from these law enforcement agencies within 10 days of receipt and to make publicly available on its website a detailed list of all individual requests made to the Department.

Again, to date, we have seen nothing from the Department. This, again, was Congress directing your Department to at least disclose those requests that you are refusing for people who are again are just simply trying to enforce law.

Secretary DEVOS. Well, Congressman, we continue to take our responsibilities to student borrowers very seriously and continue to take the steps to make—ensure that the servicers are doing the jobs that they have been contracted to do.



Mr. COURTNEY. Well, again, you are certainly not working with us in terms of trying to at least let us see whether or not your, again, total unilateral decision is, in fact, resulting in good enforcement actions being stymied and stifled.

And with that, again, I have other questions for the record regarding preemption of State student loan borrower laws which we will be entering into the record, Mr. Chairman. And with that, I will yield back.

Chairman SCOTT. Thank you. The gentleman from Tennessee, Dr. Roe.

Mr. ROE. Thank you, Mr. Chairman. Thank you, Madam Secretary, for being here and also thank you for being in Sevier County to unveil the new app for the FAFSA and I asked my educators how many of those questions, 100-plus they looked at admitting people, and they said about 10 of them. We need to take that bill up to Senate heads today and pass it. It is so complicated and for the students, I don't know how they get through it.

I am going to go a little different. I talked to a professor of mine this weekend who is very concerned about grade inflation. He is a retired professor at home and now today, in colleges, A is the most common grade in both 4- and 2-year colleges and we have now—I think 42 percent of all colleges have an A and 77 percent an A or B. And back when I was in school in the sixties in college, the most common with fewer students going was a C. High school grades have inflated exactly the same way now and if you look at standardized testing, it has been level so the grade hasn't improved to standardized testing when you compare apples-to-apples. So, my question is why has that happened and then I do not expect you to finish today answering it, but don't we need to do something about that when three fourths almost 80 percent get an A or a B and I heard Alan Dershowitz on TV the other day complain about that at Harvard.

Secretary DEVOS. Well, it is a very good question, Congressman, and it also begs—there is other data that begs the question as well, you know, why are we 24th in the world in reading and 25th in science and 40th in math as compared to the rest of the world? You know, we continue to, I think, expect different results from doing the same thing and we put more and more resources behind doing the same things and that is why this administration has proposed something like the Education Freedom Scholarships Initiative to change that dynamic. To do something different to allow for students to have different opportunities and, you know, we look at the fact that 40 percent of students entering a 4-year college or university have to take a remedial class and 60 percent going to community colleges. It is a commentary on the whole preparation that they experience in the K12 system.

Mr. ROE. Well, I think it is something we definitely need to look into because an A does not mean, you know, anything.

Anyway, I want to talk about a couple of other things and one of the things we talked about the other day is I have a very interest in career technical education and the three numbers I mentioned to you are 77, 97, and 0. And I talked to one of the presidents of our technical schools at home and they graduate 77 percent of the students on time, 19 percent of college students at 4-

year schools graduated on time, and 59 percent graduate within 6 years with this huge debt. So, 77 percent finish on time in what they started in whether it is a nursing assistant, welding, or whatever; 97 percent in Tennessee are placed in their career path, get a job; and 100 percent graduate with 0 debt.

So, it is a huge advantage and we, I think, need to be encouraging students to look at these career paths as Mr. Guthrie was talking about just a minute ago and I just would like to hear your comments on that.

Secretary DEVOS. Well, I couldn't agree more and this administration is very, very supportive of elevating and supporting a multitude of career paths to a great adult future and acknowledges that we have got to continue to raise the specter of these opportunities and give them equal credence to the unspoken or often very verbally articulated pressure to go to a 4-year college or university. And yet we have, as you have just noted, so many great opportunities for young people to consider and pursue and it is not to say they can't return to an educational setting later on and do something different. They will have multiple careers in their adult lives so we have got to—

Mr. ROE. Seven million empty jobs and very quick. And my time is expiring, but I had a round table with your educators a year ago about school safety and that discussion very quickly turned to mental health. And we went to our local hospital and we found that in our area we only had 11 inpatient beds for young people, young adults, with mental health issues. We are working on solving that problem locally now.

Another problem that was local, we are in a rural area and we have a rural school that K through 12 only has 110 students, K through 12. So, if a student there wants to take calculus, they can now go online at one of the other larger high schools online. This was done by a private entrepreneur, Scott Niswonger, I will mention his name, who was able to provide these students a great high school education from distance learning. You have been very general with your time. I will yield back.

Chairman SCOTT. Thank you. The gentlelady from Ohio, Ms. Fudge.

Ms. FUDGE. Thank you very much, Mr. Chairman, and thank you, Madam Secretary, for being here today. Madam Secretary, if you could just help me out. Five minutes is a very short period of time, so if you could just be more concise with your answers, I would appreciate it. Madam Secretary, do you realize that it is your responsibility to educate every child in the United States?

Secretary DEVOS. It is my responsibility to be the Secretary—

Ms. FUDGE. It is just a yes or no, Madam Secretary.

Secretary DEVOS. It is my responsibility to do my duty as Secretary of Education.

Ms. FUDGE. Is that a yes or is that a no? Okay. You are very good at evading. That is a really simple question so we will move on. My concern is that you spent so much of your time focused on vouchers, how do we fund religious and private schools? And then you come up with something called The Education Freedom Scholarship, which by any other name is a voucher. We are once again picking winners and losers, which is something that my colleagues

complained about for years and years about democrats. You, in fact, are trying to pick winners and losers. Now, I have never been aware of a tax credit that is a \$1 to \$1, 100 percent credit. So, now, we have already decided that we are going to make rich people richer with the tax cuts, we are going to make poor people about the same, middle class we are going to hurt with more taxes. So, now it is like you guys are not smart enough to take advantage of all these tax credits. Let me give you another bite of this apple. Let me let you give money to schools so that you can take 100 percent tax credit. It is the most ridiculous thing that I have ever heard. But, once again, by any other name, it is a voucher and it is something to benefit the rich.

Madam Secretary, are you aware that Alabama and Florida have State tuition tax credit programs and they have shown no improvement in academic achievement for students?

Secretary DEVOS. I am aware they have programs and you are wrong. They have shown improvement for students.

Ms. FUDGE. Well, I would love for you to send me that data, please.

Secretary DEVOS. I would be happy to.

Ms. FUDGE. You say in your remarks, as well as in your written testimony, that this proposal takes not one cent from local public school students or public school teachers. You did that in your own budget by cutting the education budget by 10 percent. That is something that you did. But let me also suggest to you that, in fact, it is hurting taxpayers. If you give a 1-to-1 tax credit, it is going to create a \$5 billion a year hole in the Federal Treasury. So, that's \$5 billion that could be spent on education and other things. So, indeed, it does hurt students.

You talk about freedom, which is just so enlightening for me that there is freedom. Do you know that freedom is not free? This freedom is going to cost us \$5 billion a year, 50 billion dollars over 10 years. Freedom is not free. We learned that during the Civil Rights Movement.

Secretary DEVOS. These are voluntary contributions that individuals—

Ms. FUDGE. Reclaiming my time. This is my time. Freedom is not free. We have experienced it over and over again. There is a cost to everything we do. Yours just happens to be \$50 billion to the Treasury. I just wish that at some point we would just be honest with what we are doing, and we would just tell the American people that what we are doing with this is creating a shell game to fund private and religious schools and their providers using taxpayers as the middle man. That is what we are doing. It is nothing more than another attempt to disinvest in public education and that is why I asked you the first question, which you couldn't even answer. Do you represent all of the children of the United States? It is not your job to educate all of the children? It was not a trick question. It was a very simple question. So, I just hope that the next time you come in front of us that you would stop the evasion and just give us a simple answer. Mr. Chairman, I yield back.

Chairman SCOTT. Thank you. The gentleman from Alabama, Mr. Byrne.

Mr. BYRNE. Thank you, Mr. Chairman. Madam Secretary, it is good to see you again. I believe the Civil Rights Act is clear that no child should face discrimination in school based on race, color, or national origin, whether that is in access to classes and programs or through discipline practices. Do you agree that the law is clear and can you tell us what you are doing to prevent discrimination?

Secretary DEVOS. Thanks, Congressman. I concur with you and we are working hard to ensure that all students' civil rights are respected and upheld.

And a couple of things that I would like to mention what we are doing prospectively. We have an initiative to address the inappropriate use of seclusion and restraint. It is a joint initiative between the Office for Civil Rights and the Office for Special Education and Rehabilitative Services and it provides an opportunity to highlight this important issue and support schools and districts and States as they work to meet the needs of each of their students.

Understanding that this is an important topic for many on this committee, I can assure everyone that the Department is committed to ensuring that these practices do not deprive any child of the opportunity to thrive and succeed in school. Even one child harmed through inappropriate use of seclusion and restraint is one too many.

Another area that we have continued to be on the proactive side is to hold regular webinars, technical assistance for those who need to work on the web accessibility of their institutions and we are responding to complaints, but we are being proactive with all institutions and inviting them to know and understand the use of webinars on a regular basis. Those are a couple of areas that we are working hard proactively, but also, we are working reactively to make sure that all complaints that are brought to us are addressed.

Mr. BYRNE. Well, thank you for being proactive. I think that shows your commitment to making sure the law is followed. I know you and I both want the best for all of our students and it has been my pleasure to work with you on the Education Freedom Scholarship proposal. I am so excited to see the support it is getting, not just here in Congress, but in States all across the Nation.

I do want to clear up one point for my colleagues on the other side of the aisle. The Education Freedom Scholarship proposal is not a budget item in the Education budget's Fiscal Year 2020 budget. Am I right about that?

Secretary DEVOS. You are right about that.

Mr. BYRNE. So, it wouldn't take any funds away from our education program, would it?

Secretary DEVOS. That is correct.

Mr. BYRNE. Good. So, why don't you tell everybody a little bit about what it would do?

Secretary DEVOS. Well, it would provide a tax credit, but a tax credit fund that States could elect to be part of and they could choose voluntarily to be part of it and then to formulate programs within their State and contrary to what your colleague on the other side of the aisle just alleged, it does not take anything away from any budget and, in fact, it is geared toward students and toward

empowering students to make a different choice for their education through the form of scholarships. That would be access through scholarship granting organizations designated by each State. You know, 501(c)(3) scholarship granting organizations and we talked a bit earlier about possible uses. It could be to access really new and robust career and technical education opportunities in a region. It could be for transportation to get to different opportunities. It could be to access course choice in small rural schools and it could be used for just a wide variety of uses, but the key being that families and students would be empowered to make a choice that fits for them and for their future and what they want to learn and what they want to pursue.

Mr. BYRNE. We have a great example in Alabama in Sumpter County, which is one of our poorest counties, and one of these schools was established and many of the students that are now going to that school are for the first time in their lives going to school with someone of the opposite race because we had total segregation in Sumpter County. And this school has brought African-American children and white children together in a school in Sumpter County for most of them for the first time of their lives and some of their, like, family's lives. So, this is not just providing better education, it is actually drawing this very poor rural community together and I think that is great for that community, but communities around the country. So, I thank you for your leadership on that.

With that, Mr. Chairman, I yield back.

Chairman SCOTT. Thank you. The gentleman from the Northern Mariana Islands, Mr. Sablan.

Mr. SABLAN. Thank you very much, Mr. Chairman. Madam Secretary, thank you for being here today. Secretary DeVos, you arrived in your position at a time when Republicans passed a resolution of disapproval in both chambers to overturn the Every Student Succeeds Act, ESSA, accountability reporting, and State plan regulations. While these regulations were overturned, the law's requirements remained unchanged. ESSA includes important Federal guardrails to hold States and school districts accountable for meeting the needs of all students. While there is flexibility, the law is not a blank check. Compliance with the law's requirement is not optional. So, let me ask you, are you aware, Madam Secretary, that 40 States do not include disaggregated achievement data for at least one federally required subgroup on their State report card as required by Federal law?

Secretary DEVOS. Congressman, I was pleased to be able to approve every State's ESSA plan and I didn't approve any plans that did not comply completely with the law and we are now in the monitoring phase and continued to ensure that States comply with the law.

Mr. SABLAN. I would just like a yes or no answer on the record. Are you aware that approximately 40 States do not include disaggregated achievement data for at least one federally required subgroup under statute?

Secretary DEVOS. Again, Congressman, all of the ESSA plans comply with the law and we continue to ensure that States do comply with that law.

Mr. SABLAN. Madam Secretary, that is not a yes or no. So, let me ask you this then, can States and school districts address educational equity without this information?

Secretary DEVOS. Congressman, again, we have ensured that all of the ESSA plans from every State comply with the law and we are committed to ensuring that as they implement them they continue to comply with the law.

Mr. SABLAN. I only have 5 minutes so, respectfully, I will be reclaiming my time, Madam Secretary. The answer is no, we cannot advance equity without this information. The law requires States to disaggregate data by subgroups to ensure accurate data on student achievement and accurate data is critical for parents, educators, and policymakers. So, how do you plan to address this issue to make sure the States are compliant with the law and are held accountable for the success of all students?

Secretary DEVOS. Again, sir, we continue to monitor the States as they implement their ESSA plans to make sure they are compliant with all aspects of the law and we are committed to doing so.

Mr. SABLAN. Let me be very simple. English is my second language, but you are not giving me an answer. So, let me be very simple, Madam Secretary. Can I have today your commitment to improve ESSA oversight and hold States accountable for implementing the letter and intent of the law? Your commitment, yes or no?

Secretary DEVOS. We are committed to continuing to ensure every State follows the law in the implementation of their ESSA plan.

Mr. SABLAN. On the record, you are saying that you are—I think I say yes. So, let me go to my next issue. According to the Alliance for Excellent Education, the Department of Education approved at least 12 States to implement accountability systems that do not take into account the performance of historically underserved students, as required by law, despite what you just told me. Parents and communities are now starting to see the school letter grades issue by States based on these systems. I am concerned that this letter grade may provide misleading information. For example, in one State, 25 percent of schools that receive an A are identified for targeted support due to the performance of historically underserved students. In that same State, 71 percent of schools that received a B are identified for targeted support. Does it make sense to you for a school to receive an A or a B if its students of color or other subgroups consistently underperform? These are the facts. These are data.

Secretary DEVOS. Congressman, again, we are committed to monitoring the States to ensure that they continue to comply with the law as they implement their ESSA plans.

Mr. SABLAN. Madam Secretary, respectfully, you are not answering my question. The students, the educators, we deserve direct answers. So, let me ask again, how is the Department holding States accountable for using subgroup performance to inform action to intervene in and provide additional support for under-resourced schools?

Secretary DEVOS. Congressman, again, I have told you and I will tell you again, we are committed to continuing to ensure that

States are complying with the laws and that they are following the requirements of the law regarding ESSA.

Mr. SABLAN. Thank you, Madam Secretary, you have not answered my question, but thank you very much for trying. I appreciate it. I yield back.

Chairman SCOTT. The gentlelady from New York, Ms. Stefanik.

Ms. STEFANIK. Thank you, Mr. Chairman. Madam Secretary, good to see you today. I wanted to focus my questions on higher ed. When I visit colleges and universities and community colleges in my district, it is very clear that the traditional student today is, in fact, nontraditional. Oftentimes, they are going back to pursue their education midcareer, they are working part-time or they are raising a family. And I think that we need to work to modernize opportunities in higher ed to make it available for the nontraditional students. The Department has proposed an expansion of Pell Grants to shorter term programs. How will this help contemporary students gain skills and career and technical education that is very impactful in finding jobs in today's economy?

Secretary DEVOS. Thanks for that question, Congresswoman, and yes, we have proposed to expand Pell to be eligible for short-term, high-quality programs for certifications and certificates. We know that there are many jobs available today that require just a short-term kind of program and yet, we have been very rigid in terms of how we viewed the use of Pell funds and so we believe that expanding that and would look forward to working with Congress on the appropriate guardrails around that, but I think that short-term would be an excellent move.

Ms. STEFANIK. I agree with you and I think it is a real opportunity for bipartisan modernization of the Pell program. Another Pell related question is we know when we are looking at the historic amount of student loan debt and that a large percentage of that student loan debt is students who have not completed. And I understand that 60 percent of those who actually obtain a Bachelors Degree today do so in 6 years so that is much longer than the traditional 4 years and we also know that the longer it takes a student to complete that degree, the more debt they accrue.

One of the proposals that you and I have discussed and the Department has put forward is utilizing Pell for dual enrollment programs. Can you expand upon that?

Secretary DEVOS. Yes, well, many students would like to pursue college level classes in high school. They have completed their high school requirements and we think that expansion of Pell into those opportunities is another way to modernize and acknowledge what the opportunities are for students today.

Ms. STEFANIK. Absolutely. And I think it also will help us ensure that the completion rate increases and that students are graduating at a faster rate, therefore, taking out a lower amount of student loan and then having lesser student loan debt.

The last question I wanted to ask is related to work study. I understand that each year Congress appropriates over \$1 billion to the Federal Work Study Program and this is a substantial sum of money. It largely goes to finance student jobs on campus and those jobs are not necessarily positions related to student's career aca-

demic interests. Your budget proposes reforms to this. Can you talk about that?

Secretary DEVOS. I would love to. We believe that allowing students to essentially do an internship or an apprenticeship in jobs or with businesses related to careers that they want to pursue would be very compatible with their actual formal learning and so we have proposed to change work study requirements to allow for employers to have students, host students, as part of their academic studies and through a work study program in business.

Ms. STEFANIK. I agree and, again, as I visit employers that are near local colleges, they are eager to partner. They are eager to identify the future of their work force as early as possible to help them develop those skills. So, I wanted to highlight these three very important bipartisan opportunities that we can pursue as a committee and I look forward to working with you.

Secretary DEVOS. Likewise. Thanks.

Ms. STEFANIK. I yield back.

Chairman SCOTT. Thank you. The gentlelady from Oregon, Ms. Bonamici.

Ms. BONAMICI. Thank you, Mr. Chairman. Madam Secretary, a budget is a Statement of priorities and values and I worked hard on the Every Student Succeeds Act and I am deeply disappointed that the President's budget would zero out funding for Title IV Part A grants. These are the flexible block grants that support well-rounded education, art, civics, safe and healthy schools, technology, so all students benefit, not just those in wealthy districts or neighborhoods. These grants have bipartisan support. They are an essential part of ESSA. It is unacceptable that the Department does not see their value.

So, previously, you told me that Title IV Part A funds are spread too thin to be effective. If that is your position, isn't the logical thing to fully fund Title IV Part A grants rather than eliminate them, which exacerbates inequality of opportunity? And that is a yes or no question.

Secretary DEVOS. Well, Congresswoman, it is not a yes or no answer because we had to put forward a budget that met the requirement of a 10 percent reduction overall so we had to make difficult choices so we chose to—

Ms. BONAMICI. And I need to reclaim my time and move on to another question, but you told me that they are spread too thin, so the logical thing is to fully fund them rather than spread them too thin.

Now, I want to ask you about ACICS. The Department of Education fully reinstated ACICS as a recognized accreditor even after they oversaw some of the largest collapses of institutions of higher education in American history: Corinthian Colleges, ITT Tech, and after they were reinstated, ECA. And in every case ACICS disregarded clear warning signs and failed to act quickly enough to protect students and taxpayers.

So, last year several of my colleagues and I sent you two letters about this. We urged you to rescind the decision. We expressed concern that the Department's decision was based, at least in part, on erroneous and misleading information, including claims that ACICS secured endorsement and support from other accrediting



agencies, which turned out to be false. We also requested the information and documentation that you considered.

So, you have not answered the letters so rather than having us wait longer, please explain why did the Department fully reinstate an accreditor that repeatedly accredited schools that harm students?

Secretary DEVOS. Well, Congresswoman, it is a provisional reinstatement. There are still a couple of provisions that ACICS has to address and it is important to note that we were ordered by the court to reexamine the ACICS case, 36,000 pages of information the previous administration did not even acknowledge or deal with in this process, and so, we did so. It was a very in-depth review and study and the reinstatement came with a review of all of that information that heretofore had not been considered.

Ms. BONAMICI. I am reclaiming my time. Do you have a time-frame for responding to those letters because we sent them last year? Can we get them in the next 2 weeks?

Secretary DEVOS. I will certainly look into it, yes.

Ms. BONAMICI. Thank you. We do need that underlying information what you considered because, again, some of the information was false.

I have another question. Yesterday the Civil Rights Subcommittee held a hearing on the Equality Act. We know that transgender students are frequently bullied and victimized. We know also that the 2016 guidance to schools about transgender students was applauded by education experts, healthcare experts, educators, counselors, pediatricians, psychologists because it made students safer at school. But your Department rolled back that guidance creating uncertainty and concern. So, I have two questions. When you rolled back that guidance, did you know that the stress of harassment and discrimination can lead to lower attendance and grades as well as depression and anxiety for transgender students? Did you know that?

Secretary DEVOS. Congresswoman, OCR is committed to ensuring all students have equal access to education free from discrimination.

Ms. BONAMICI. Sorry, I would really like an answer. Students and families need to know this. We had a mother of a transgender student here yesterday. We need to know this. Did you know when you rolled back the guidance that the stress of harassment and discrimination can lead to lower attendance and grades as well as depression for transgender students? Did you know that when you rolled back the guidance?

Secretary DEVOS. I do know that, but I will say again that OCR is committed to ensuring that all students have access to their education free from discrimination.

Ms. BONAMICI. Let me ask you this as well. When you rolled back the guidance, did you know that a study recently published by the American Academy of Pediatrics revealed alarming levels of attempted suicide among transgender youth? Did you know that as well when you rolled back that guidance?

Secretary DEVOS. I am aware of that data.

Ms. BONAMICI. I am extremely concerned based on what we heard yesterday about the rollback of that guidance. In my remain-

ing time, I want to followup on Congresswoman Fudge's question about Education Freedom Scholarships because a \$5 billion tax credit means \$5 billion less in revenue. And I do want to point out that you did receive three Pinocchios from the Washington Post for trying to say that was not using public money. It is public money if it is \$5 billion less in revenue. That revenue could go to fund Pell Grants, to fund Title IV grants. And I see my time is expired. I yield back.

Chairman SCOTT. Thank you. The gentleman from Pennsylvania, Mr. Smucker.

Mr. SMUCKER. Thank you, Mr. Chairman. Good morning, Madam Secretary. Thank you for being here. I would like to just briefly talk about education free scholarships and let other members of the committee know just a little bit about a similar program in Pennsylvania, the EITC program, that has been in effect for a number of years and we have had a lot of discussions in Pennsylvania around charter schools. We have had discussions about school choice programs. There have been voucher programs. But the EITC program in the midst of all those discussions has had broad bipartisan support throughout the entirety that the program has been in effect and, in fact, almost every year we have been increasing the number of tax credit programs that are available. Why? Because people on both sides of the aisle see the benefit to students who could not potentially have the opportunity to attend a great school see the scholarships that are available through the program have talked to the families and the parents who desperately want to get their child into a school that works for them and again, have supported this on a bipartisan basis, both Republican and Democrat Governors.

So, I think it is a great proposal. I appreciate the work that you are doing to ensure that every child has the opportunity for the world class education that they deserve, that every child has the opportunity for an education that will prepare them for life after K-12 whether it is a college or the military or directly to the workplace. It is critical that we continue that work and I am troubled by some of the points that are made by folks in their questioning to you that you are picking winners and losers as a result of this program. Our system today picks winners and losers based on your ability to pay for tuition at a private school if your school is not effective.

Now, I have three of my own kids who have been through the public school system. We are fortunate to have, in the district that I represent, some absolutely great public schools and we should do everything that we can to continue to support the work that those schools are doing. But if there are districts where a parent does not have an opportunity to send their child to a school that will provide that kind of opportunity, it is incumbent upon us to be ensuring we put policies in place and we provide the resources so that everyone has that opportunity. So, I guess I would like you just to speak to that for a minute.

I know the work that you have done to ensure that every student has an opportunity, to ensure that we have great schools whether they are public schools, whether they are private schools, whether they are magnet schools, charter schools, which are public schools,

but, you know, I would like to talk just a little bit about this idea that we are picking winners and losers and how the work that you are doing indicates that is not what you are trying to do.

Secretary DEVOS. Well, thanks, Congressman, and I know that Pennsylvania has had great success in meeting students' needs. And let me just say, my focus is and always will be on students and on helping all students get a great education through an equal opportunity. The Education Freedom Scholarships proposal would help advance that for many, many students and it is focused on students. As you have identified, individuals today who have the financial resources to send their child or children to a different school or to move to a different place already have choices, but there are way too many families that don't have that choice and we continue to consign them in too many cases to schools that do not work for them. There are studies after studies showing that we continue to do the same thing and expect different results. I am suggesting we do something different and test out and see how many different results we will get by doing something completely different and Education Freedom Scholarships would take us in that direction.

Chairman SCOTT. Time has expired. They have called votes, but we have time to get in one additional set of questions. The gentleman from California, Mr. Takano.

Mr. TAKANO. Thank you, Mr. Chairman. Madam Secretary, good morning. I would like to get directly at the questions related to borrowers' defense. Just 2 weeks ago, on March 28, Senator Patty Murray questioned you before the Senate Appropriations Committee on the number of borrower defense claims that your Department has approved since the October 2018 court order. The Department's own quarterly data through December 31, 2018, established that zero claims have been approved. Is it still true that no borrower defense claims have been approved?

Secretary DEVOS. Well, Congressman, they had been being approved before the court stepped in. They have not been since the court stepped in.

Mr. TAKANO. Madam Secretary, excuse me, by your own Department statistics, as of December 31, it showed that your Department has approved zero claims and then you also answered before Senator Patty Murray you thought that one was approved, but then the next day you issued a statement saying that no, in fact, that zero claims have been approved.

Secretary DEVOS. It is true that none have been approved in the last several months. That is due to a pending court decision, a court case that has precluded us from continuing to—

Mr. TAKANO. Madam Secretary, that court decision you are talking about is October 2018 and it lifted the stay and ordered you to implement the rule. So, I take it that zero claims have been approved and that nothing has changed. I would like to better understand the process by which the Department decides on borrower defense claims and why it has taken you so long to process the nearly 160,000 pending claims. I want you to understand that merely processing claims and faithfully implementing the rule, which you have been ordered to do by the court, are different. We see that you haven't approved or rejected claims, but you are clos-

ing them. Is your Department cherry-picking borrower defense claims with the intent to close out those cases?

Secretary DEVOS. We have been addressing closed school discharges with the students that clearly qualify for their student loan forgiveness, and that's to the tune of \$172 million.

Mr. TAKANO. My question is, are you cherry-picking borrower defense claims with the intent to close them out?

Secretary DEVOS. We have closed out 16,519 eligible borrowers.

Mr. TAKANO. I understand you have closed out those claims, but are you specifically cherry-picking them in order to close them out.

Secretary DEVOS. We are ensuring that those who are due relief because of closed school discharge are addressed immediately. There are other students who have submitted—

Mr. TAKANO. Okay. I repeat that you have not approved or—I am reclaiming my time. You have not approved or rejected a single claim. You have closed thousands of cases. Have you or any of your political appointees instructed career staff at the Department to focus on prioritizing the closing of the claims over approving them, yes or no?

Secretary DEVOS. That have prioritized, I am sorry?

Mr. TAKANO. Have you or any of your political appointees instructed career staff of the Department to focus on prioritizing the closing of claims over approving them.

Secretary DEVOS. We are focused on addressing all borrower defense—

Mr. TAKANO. That is a yes or no question.

Secretary DEVOS. It is not a yes or no answer.

Mr. TAKANO. Have you ordered your political appointees—

Secretary DEVOS. We have attempted—

Mr. TAKANO. Madam Secretary, I remind you, you are under oath. The question is have you or any of your political appointees instructed career staff at the Department to focus on prioritizing the closing of claims over approving them?

Secretary DEVOS. We are focused on ensuring that the students clearly have closed school discharges—

Mr. TAKANO. I think that is a non-answer. I am reclaiming my time. On the off-chance that your Department were to ever approve a student claim, is it not true that if the school has closed that the taxpayers are now liable for this debt and not the school that defrauded the student?

Secretary DEVOS. The closed school discharge claims are ones that we are processing that we have already addressed \$172 million.

Mr. TAKANO. I am reclaiming my time. I am reclaiming my time. The answer is that when the school is closed, the taxpayers are liable for that unpaid loan. However, if the school is still open, the Department has the ability to begin processing the—recovering the recompense of these schools. Knowing this, a reasonable and prudent person might posit the idea that your Department may have the perverse incentive to intentionally delay implementation of the borrower defense rule to protect the financial interests of these for-profit institutions and their investors. Last month you also confirmed that the Department is still working to promulgate

new borrower defense rulemaking. Is the fact that the Department is drafting a new rule, a possible explanation for the delayed implementation of the borrower defense rule?

Secretary DEVOS. We are implementing the borrower defense rule as ordered to do and we are also in the process of continuing to refine the rule because we do not agree with the previous policy of the—

Mr. TAKANO. Well, Madam Secretary, I will state again that 160,000 pending claims, not a single approved claim, thousands and thousands of closed claims. I am very troubled by your non-answers today. Madam Secretary, there is no freedom in a student being obligated to pay off a loan from a school that has defrauded them. It is an unjust burden. I yield back.

Chairman SCOTT. As the clock shows, a vote has been called. There are several votes and it will be at least about a half an hour before we can get back. We will recess until 10 minutes after 11. Committee is in recess.

[Recess]

Chairman SCOTT. The committee will come back to order, and I want to welcome everyone back to the hearing with Secretary DeVos, but before we resume questioning, I needed to clarify a couple of things for the record. First, Madam Secretary, the OIG report referenced by my colleague from Connecticut, Mr. Courtney, on loan servicing did not only review records prior to your time as Secretary, the OIG did a review of records from January 2015 through September 2017, which means that the OIG did find failure to adequately supervise loan servicing during your—while you were Secretary. While I am glad you collected something from services for their noncompliance, the record should reflect that this amount only represents less than 0.1 percent of the \$1.7 billion that—budgeted for servicing. Given that 61 percent of the reports reviewed by the OIG showed failures, I would have expected a larger collection.

Second, Madam DeVos, you mentioned the importance of allowing the Federal Work Study to better align with students' career goals, but failed to mention that you had proposed to cut the program by more than half in your budget. And third, during my questioning, I asked if Disparate Impact Analysis is legal and required under Title VI and the regulations. Your response was yes, we continue to enforce it, as it has been regulated to date.

Based on that, I can assume that data that shows that a school district policy or practice has a potentially discriminatory effect—For example, when a district is expelling black students at a rate disproportionately higher than white students—the Office of Civil Rights, under your leadership, will be opening investigations, when data show the discriminatory effect, in compliance with that regulation. With that, I recognize the gentleman from North Carolina, Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman. Early this year, I introduced the SOAR Reauthorization Act of 2019. This legislation reauthorizes the D.C. Opportunity Scholarship Program for 5 years, providing low-income students in the District of Columbia scholarships to attend high-quality elementary and secondary private schools. Ninety-one percent of students participating in the

programs are minorities with an average family income of \$24,000. These scholarships provide a lifeline to students who would not have opportunities to achieve academic success otherwise. Like you, Secretary, I have met some of these wonderful families, and have seen the hope this particular legislation brings to pass.

Secretary DeVos, I want to thank you for your requesting increased funding for the D.C. Opportunity Scholarship Program. In your opinion, two-part question, why is it important for Congress to act now and reauthorize the D.C. Opportunity Scholarship Program, and what are some of the possible impacts of a lapse in funding for this program?

Secretary DEVOS. Well, Congressman, first, let me say thank you for your leadership on championing this in your committee and in your body. I think that, well, first of all, the Opportunity Scholarship Program is serving students' needs today, and there is a demand, an increased demand for more students to be able to participate. So, there is a demand for more opportunity. That is why we have asked for an increase in funding there, doubling that program, and then it is important to act because these students' opportunities are going to run out if the funding is not reauthorized, and if it is not made a permanent part of their ability to plan.

We know that more than half the students in the District of Columbia actually choose schools different than their assigned one, and this has made for a very robust and great improvement on many levels.

Mr. WALKER. That is an interesting point that you just made. I do not want to get past that over half, or right at half, of these students would choose different schools. That is important, and it allows—it empowers the parents and these families to make the best education choices. There have been many claims. We have heard some interesting claims, even today, by my Democratic colleagues, about the SOAR Reauthorization Act of 2019 diverting resources from the public schools. How would you respond to those claims, specifically, in regards to the three-sector approach of this legislation?

Secretary DEVOS. Well, the District of Columbia has done a great job of addressing the needs of all students, and allowing for students to find the right fit for them. It should be a model everywhere, frankly. Students need to go where their education is going to work and fit for them, and Washington, DC, has been a good model for this, and all students' achievement has been improved, as a result of having these choices and the competition between the various kinds of schools.

Mr. WALKER. I think the evidence supports that. Let me switch topics and kind of go into the higher education, if I could, please, and talk about the historical black colleges and universities. I represent the largest HBC in the country. My wife is a two-time graduate of Winston-Salem State. I represent A&T. We have a little Aggie/Ram thing about football season, but that is a different time to talk about.

I do understand the importance, and the roles, and I have seen the, really, the great work that some of our HBCUs are doing, and what they—and the role they play in the higher education system. Secretary DeVos, from my understanding, your budget request had

included \$626.4 million for programs related to HBCUs. Is that correct?

Secretary DEVOS. That is correct.

Mr. WALKER. Can you elaborate on the initiatives and plans of the Department to improve academic quality and increase opportunities in the aforementioned HBCUs?

Secretary DEVOS. Well, we think HBC—this President and this administration know and respect the value that HBCUs bring to higher ed in our country, and we continue to support them and their missions. I meet regularly with the presidents of many of the HBCUs and the leadership of their consortium, and continue to look for ways to—for them to be able to strengthen the programs they are offering, and to be able to offer more students the opportunities that they already have.

Mr. WALKER. Three years ago, Senator Tim Scott and I partnered, for the first time ever, to bring more than 80 chancellors of historical black colleges and universities to Washington, DC. It was a way that we could hear firsthand, and see what the issues and the concerns were. You were gracious enough, I think it was maybe our second year, that you came out, after being named the Secretary of Education, that you came.

One of the things that we learned from those meetings is the importance of Pell Grants and how, with an estimated 70 percent of students eligible for Pell Grants, one of the things that we learned was to not just have these in the spring and summer, but to be able to incorporate that, those, year-round. With your support, we were able to see that come into law. My final question, for you, is how does the Department's budget expand access to these Pell Grants?

Secretary DEVOS. Well, the budget proposes expanding Pell Grants to short-term, high-quality programs, so that students can access certification and certificate programs that do not take a full semester or a full year, and we think this is an important next step to modernize—

Mr. WALKER. Sure.

Secretary DEVOS [continuing]. the Pell offering.

Mr. WALKER. Thank you for your service. And with that, Mr. Chairman, I yield back.

Chairman SCOTT. Thank you. The gentlelady from North Carolina, Ms. Adams?

Ms. ADAMS. Thank you, Mr. Chairman, and thank you, Madam Secretary, for being here today. I listened to Congressman from North Carolina talk about Pell Grants, and I am 40 years, retired, college professor in Greensboro, at Bennett College. My question of you—in terms of following up on that, Pell Grants are great. Many of our students who attend HBCUs, 80 to 90 percent of them depend on it and financial aid, and, yes, we have expanded it year-round. But I think we also need to—we got to expand the money year-round, because if you stretch it out, and we do not put the additional dollars in that, that does not help very much, but it is certainly an opportunity for students to do better. Is it true that your Fiscal Year 2020 budget plan fails to request reauthorization of mandatory funding for MSIs, resulting in a cut of \$255 million for MSIs, including \$85 million to HBCUs, which represents some of

our lowest endowed institutions, and I want to move quickly? So, if you could, tell me if you know that, yes or no?

Secretary DEVOS. Well, ma'am, the budget has proposed consolidating many of those smaller grants into one that could be better targeted to the institutions and that way, primarily, the students that need it most, to give more flexibility to meet individual students' needs.

Ms. ADAMS. So, that is a yes or a no?

Secretary DEVOS. Well, it is a proposal to consolidate—

Ms. ADAMS. Okay. That—

Secretary DEVOS [continuing]. some of the smaller line items into one, with a mission—

Ms. ADAMS. Oh, okay.

Secretary DEVOS [continuing]. to serve those students—

Ms. ADAMS. Right.

Secretary DEVOS [continuing]. more broadly and more effectively.

Ms. ADAMS. Thank you. All right. What was the rationale for eliminating funding that many institutions depend on, which could eventually force a handful of them to close?

Secretary DEVOS. We, again, have made budget requests on the discretionary side. We also know that the mandatory side, of course, is not impacted by any of the budget requests. We continue to want to ensure that students have the most opportunity to access the funds that Congress intends to reach the most needy and vulnerable students.

Ms. ADAMS. Okay. Let me move on because I have got a lot I want to ask. It appears to me that the Department may have its priorities a little bit confused because it is willing to see schools who have filled an—or fill a historical mission, and educates a large percentage of low-income, first generation college students face hardship. Yet, it continues to prop up low-performing and unscrupulous for-profits. So, I want to touch on a line of questioning that Ms. Bonamici started. You said that the decision is provisional, but it still does not make a lot of sense to me. In fact, the decision to re-recognize and ignore the thorough analysis conducted by your staff, who concluded that ACICS did not meet two important recognition criteria: competency and conflict of interest. So, are you aware that less than a month after you re-recognized ACICS, Education Corporation of America, a large for-profit chain accredited by ACICS closed 70 campuses in 18 States that enrolled 1,900 students—19,000 students? Are you aware of that?

Secretary DEVOS. Well, Congresswoman, with regard, broadly, to ACICS, we, again, followed the judge's order to consider 36,000 pages of information that had not been considered by the previous administration and—

Ms. ADAMS. So, you are aware?

Secretary DEVOS [continuing]. the report, to which you are referring, did—also did not take into account that information, so.

Ms. ADAMS. Okay. Madam Secretary, are you aware of that? Can you say yes or no?

Secretary DEVOS. I am aware of the process that we went through to recognize and reinstate ACICS.



Ms. ADAMS. Oh, okay. All right. Well, let me move on. I am not going to—you are not going to give me a yes or no, so. Are you aware that in the year leading up to your decision to re-recognize ACICS, 61 accredited schools were closed, 61?

Secretary DEVOS. Again, Congresswoman, I—we followed the process that—we followed a very thorough process in reexamining ACICS's ability to accredit, and are confident that the process was done accurately, particularly given the court order to consider—

Ms. ADAMS. All right.

Secretary DEVOS [continuing]. 36,000 pages of unconsidered information.

Ms. ADAMS. What then is the justification for not seeking input from the Statutory Advisory Committee with the sole function of providing a policy recommendation to you, primarily relating to accreditation and the accreditor?

Secretary DEVOS. I do not—

Ms. ADAMS. And I only have a few seconds.

Secretary DEVOS. Well, again—

Ms. ADAMS. You cannot give me—Okay.

Secretary DEVOS [continuing]. we have—we underwent a very thorough process.

Ms. ADAMS. All right. Let me just say that the answers that you have provided reveal a fundamental lack of concern for the tens of thousands of students that were taken advantage of because of shoddy oversight by ACICS and, Mr. Chairman, I think it would be nice if we had a Department that actually puts students first, particularly our students who view higher education as their ticket out of poverty. I was one of those. So, Mr. Chairman, I yield back.

Chairman SCOTT. Thank you. The gentleman from Texas, Mr. Taylor?

Mr. TAYLOR. Thank you, Mr. Chairman. Madam Secretary, you did not get—you have not had a chance to answer a lot of questions. Is there anything you want to add to fill out, maybe round out an answer to a question so far?

Secretary DEVOS. Well, there have been a number of things on which I was not able to really comment, and I think it is difficult if issues are being conflated and I did not—I also am here not to answer multiple choice questions, but really to have an exchange on a number of issues that are of mutual concern to all of us. Our concern is about students, and so—

Mr. TAYLOR. Sure.

Secretary DEVOS [continuing]. I will try to address them as I need to, again. Thanks. Thanks for the opportunity.

Mr. TAYLOR. All right. Thank you, Madam Secretary. Well, I, you know—and I think what is of mutual concern to all of us is, certainly, the rising cost of college, and so something that we have found, in Texas, is that dual credit classes make a huge impact. If a student takes a dual credit class at the high school level, they have a higher percentage of—they have a higher GPA in college. They graduate sooner. They graduate with less debt, and they are more likely to graduate from college at all. So, rigor in high school makes a difference in college graduation rates, and I think that everybody here cares about more children successfully finishing high

school and then going on successfully getting a college degree and being educated.

I think that is what everybody in this committee is really committed toward, and so dual—again, going back to dual credit, dual credit is—has been very successful in my time in the Texas legislature, all through legislation, to make sure that students that took dual credit classes would receive funding from the State of Texas, and I have seen some really great innovations at home.

I will highlight one of my districts, Allen Independent School District. They have—actually, they are building a dual credit academy that would actually provide an associate's degree when the student finishes high school, with their community college, and so we are—and that actually saves the taxpayer money because you are already paying for that high school degree, and so, if they graduate with an associate's degree, you are that much better off.

One of the things that I have had discussions with, on both sides of the aisle, is having the Department of Education recognize high schools, like Allen Independent School District, that are actually doing a good job, having more dual credit classes. Have you given any thought on how the Department of Education can participate in recognizing schools that are doing a good job across the country, on a State-by-State basis, that are doing a good job on dual credit?

Secretary DEVOS. Sure. Sure. Well, we had talked about this a bit, and I think it is a great idea that—one that we should look into to, perhaps, recognize creativity in this area, in a new way. It is not an area that we have had any kind of formal recognition in, but I would be happy to work with you to consider a program such as that.

Mr. TAYLOR. All right. Well, it is certainly something, I think, that is important, you know, for our country. We need to have more people who are highly educated, and I think that clearly rigor in high school means results in college, and dual credit is definitely, without any doubt, has a definite positive impact that way. So, I look forward to—

Secretary DEVOS. Thank you.

Mr. TAYLOR [continuing]. working with you on that. Mr. Chairman, I yield back.

Chairman SCOTT. Thank you. The gentleman from New Jersey, Mr. Norcross?

Mr. NORCROSS. Thank you, Mr. Chairman and Secretary. Thank you for coming here today, and I agree with our colleagues that we are all looking to create an education system that is better for our children, and I think one of the ways we can do that is making sure the teachers, along with administrators and certainly the kids, work toward that direction in working together.

So, one of the things that I have known from my history, previous to coming here to Congress, is that a relationship between the employer and the employee works best when they work cooperatively. So, one of the things that you recently talked about is that you are thankful for the Supreme Court decision, in Janus, because it freed up those who believe, or have been coerced to be participants in something they did not want to participate in.

In reality, teachers are being targeted, spammed, coerced by groups, such as Mackinaw, the center that you probably know

something about, and public policy from the Freedom Foundation. They have called. They have emailed. They have advertised. They have gone door to door, trying to get teachers to leave what they believe is a fair foundation for learning, and that is their union.

If teachers are choosing to join unions, why are the two foundations—that your families associate with—the top givers to those groups that are trying to get people to leave what they believe in, and that is joining a union. Why would you do that?

Secretary DEVOS. Well, Congressman, I am an advocate for Freedom Across the Board, and we have a very significant proposal to help teachers exercise more freedom in their own—

Mr. NORCROSS. By coercing?

Secretary DEVOS [continuing]. personal, professional development.

Mr. NORCROSS. If everything that you spoke against is about—

Secretary DEVOS. Congressman, can I please—can I please finish—

Mr. NORCROSS. You can, but I want to make sure you answer the question that I am asking—

Secretary DEVOS. Well, I am—

Mr. NORCROSS [continuing]. and that is one of the relation; to call, to email, to advertise, and go door to door. That is not an educational program. That is coercing, and in your Statement you talked about that. So, that is what I would love to have you answer.

Secretary DEVOS. And, Congressman, the proposal that our administration has put forward would allow teachers to determine their own professional development, and to take advantage of developing themselves with autonomy, and not be assigned to do so by their district or their building or whatever, but allow them to continue—

Mr. NORCROSS. What does that have to do with joining unions? They are not being assigned to join a union.

Secretary DEVOS. In—and the Janis decision has allowed teachers to decide whether to be part of a union or not.

Mr. NORCROSS. Absolutely.

Secretary DEVOS. So, I am talking about the proposal that we have put forward to elevate teachers and their profession, and to continue to help them in their own development, to develop a mentorship and residency program—

Mr. NORCROSS. And what does that have to do with joining unions? You are not answering that.

Secretary DEVOS. It does not have anything. It has—it has to do with supporting teachers.

Mr. NORCROSS. So, why are you—why are you answering that when we talk about—

Secretary DEVOS. It has to do with supporting—teachers, and that is what we are—

Mr. NORCROSS. But I am not asking about supporting teachers. You took a public position suggesting that joining a union of their own free will was something that you did not believe in. So, you are not answering me—

Secretary DEVOS. No, I said that—I said I was pleased that they have—now have the ability to decide whether or not—

Mr. NORCROSS. They have already had that ability, as you know, but you, through your foundations that you are associated with, have coerced, have sent letters, have gone door to door, doing exactly what you said they should not do. So, I am finding it very difficult to—

Secretary DEVOS. Congressman, when I took this job, I resigned from anything and everything outside of this job. I am focused—

Mr. NORCROSS. So, you no longer believe that?

Secretary DEVOS. I am focused on students—

Mr. NORCROSS. So, you no longer believe in that?

Secretary DEVOS [continuing]. and I am focused on supporting teachers and great teachers to be able to advance in their jobs.

Mr. NORCROSS. So, do you believe the teachers should have the ability to join a union?

Secretary DEVOS. Clearly, they should—

Mr. NORCROSS. Okay. So, you believe in democracy?

Secretary DEVOS [continuing]. and they should have an ability to not, if they decide not to.

Mr. NORCROSS. We agree with that. It is called democracy. It is something we do here in this country, pretty well, but do you still believe—you told me you have resigned from the foundations, that you no longer believe in coercion because that foundation helped pay those organizations, to call, knock on doors, coerce. Do you still believe in that?

Secretary DEVOS. Congressman, I am here for one job, and one job—

Mr. NORCROSS. Do you still believe in that? It is a very simple question. It is not multiple choice.

Secretary DEVOS. And it is a very simple answer.

Mr. NORCROSS. It is yes or no, and I want to be respectful, but you also have to respect us—

Secretary DEVOS. I am here to support students and their futures.

Mr. NORCROSS [continuing]. in actually answering the questions, and that is the part that you and I can agree with. We are here to try to ask questions and get answers, and that is the way we work together, but when you start answering something I did not ask, that is very disrespectful. I yield back the balance of my time.

Chairman SCOTT. The gentleman from Texas, Mr. Wright?

Mr. WRIGHT. Thank you, Mr. Chairman and Madam Secretary. Thank you for being here today. First, I want to applaud your dedication to freedom and education. Not only does that result in more choices, but also more innovation, which, I think, our system desperately needs. I also want to offer to you that it is not your responsibility to educate students. You are not in the classroom. That is a responsibility, first and foremost, of parents, then of teachers, administrators, schools, under the guidance primarily, of local and State governments, not the Federal Government.

You can offer opportunity, guidelines, even restrictions, but your job is to carry out Federal laws that relates to your Department as determined by the President of the United States. Would you agree with that?

Secretary DEVOS. I would agree with that.

Mr. WRIGHT. Thank you. I wanted to speak just a moment on higher education. I know you have already discussed this at great length, but we had a hearing not too long ago on this that was mentioned earlier, and I was very disappointed that the panel's consensus seemed to be that the answer was more Federal money. There was a reluctance to even discuss how colleges and universities might lower their cost, and, as you know, there has really been no incentive for higher education to lower its cost, especially when the Federal Government is guaranteeing all of these loans. So, can you speak to that, and how we might entice or get, you know, colleges and universities to look at that side of the equation?

Secretary DEVOS. Well, Congressman, it is a complex question for sure, and it is a concern. And I have a graph here that I think very graphically illustrates the rise in cost, from \$7,000 for a 4-year degree in 1980 to now, on average, \$19,000 in public universities. So, it confirms what you have already raised the spectra of. I think we start by helping students with more information and giving them more tools, when making a decision about where to go to school, and part of our next gen initiative is to add information to the college scorecard. That will allow students to compare, at a program level, by institution, what the cost of that education is going to be and what their likelihood is in terms of earning potential, at a program level, which is going to be far more valuable than the information that we currently have, which just gives an average for a school, which does not tell you the dramatic differences between, say, if you are a history major perhaps or an engineer, and that is one tool that I think that we can provide students.

I think we need to work together, and I look forward to proposals that might be advanced from this body around how to hold schools accountable or how to have them have some skin in the game. I have not yet heard a really good proposal advance that might get after this, but the reality is that there is no incentive to restrain costs.

Mr. WRIGHT. Right. Thank you. My last question has to do with something that also has already been discussed, and that is, I know that you are as dedicated as anyone to preparing the next generation of work force, and that entails all kinds of things and education. In my district, we have at least two school districts that have career centers, and it is really cutting edge, innovative stuff, and I know there is a lot of these around the country, but I would invite you to visit someday. I think you would be impressed because high school students are graduating with State certifications to go right into jobs, and everything from being certified welders to certified phlebotomists, one of them being Barbara and Mansfield, is starting a new program to teach high school students how to operate and maintain drones because that is an emerging market demand. And I want to know what your Department and what your budget is doing that would help these collaborative efforts like that, so that we can help educate these kids that are not going to go to college.

Secretary DEVOS. Well, we have a couple of areas in which we have focused—proposed focused resources. One is around the Education Freedom Scholarships Initiative. Programs could be created in States to really enhance career and technical education options

for students, and provide new ways to do that, provide transportation dollars for students. And then, on the other side, we have in the budget the \$1.3 billion around the Perkins Five and to support continued implementation of these opportunities, both at the high school and post high school level, and then a pre-apprenticeship program that we have proposed to the tune of \$60 million. That would help students that are—that need to actually come back to school before they can even be considered for an apprenticeship, but the whole notion of career and technical education opportunities is one that States have begun to address in specific ways.

There are many more opportunities to do what is necessary, both for students and for their opportunities, in terms of employment, and the best way to do that, I think, is a cooperative effort on a regional level, between employers and educators, really looking at and addressing the needs of that region.

Mr. WRIGHT. Right. Thank you very much and, Mr. Chairman, I yield the remainder of my time to Dr. Foxx.

Chairman SCOTT. Thank you. The gentleman's time has expired.

Mr. WRIGHT. Sorry. I tried.

Chairman SCOTT. The gentlelady from Washington, Ms. Jayapal?

Ms. JAYAPAL. Thank you, Mr. Chairman and Madam Secretary. Thank you for being here today. I wanted to just start somewhere where I think we would be on the same page, which is the mission Statement of the Department of Education. Can you just tell us the one sentence mission Statement of the Department of Education?

Secretary DEVOS. The mission Statement of Department of Education is to help students be prepared for their futures, a mission that I am focused upon.

Ms. JAYAPAL. Okay, good. I will just read it. I am not trying to trap you here, so. It is to promote student achievement in preparation for global competitiveness by fostering educational excellence and ensuring equal access. Do you agree with that?

Secretary DEVOS. I do.

Ms. JAYAPAL. Great. So, putting students first is essential to fulfilling the mission, as you have mentioned in your Statements, and that includes the Department of Education's role in setting standards for the schools that take Federal student aid money to ensure that students are actually getting that quality education through a process of accreditation, which, for people out there, is sort of like the Good Housekeeping Seal of Approval in order to get government money. And so we have got to make sure that we get this right because if the standards are not strong enough, and if the institutions are just out to scam students and taxpayers or do not provide a good education, then everybody loses. But here is the thing about accreditation agencies, they are actually funded through fees from the very institutions that they regulate. So, there is potential for real conflicts of interest here, and that is why it is important that the State Department sets up some standards to hold them to account, and the standards have to make sure that we are not playing into the old adage of "the fox is guarding the henhouse." Right? You know that phrase, "The fox is guarding the henhouse," means that someone who cannot be trusted has been

chosen to protect someone. Kind of like a bank robber guarding a bank.

Okay, so earlier this year, you convened a committee to rewrite these basic standards in a process called Negotiated Rulemaking. Out of the 17 voting members on this committee, how many slots were allocated to representatives of students, since we are putting students first?

Secretary DEVOS. Well, Congresswoman, let me just say that I am very proud and excited about this process—

Ms. JAYAPAL. I know you are, you have said that. I just wanted to know how many slots on the committee were allocated to students.

Secretary DEVOS. Negotiators were selected by a career team—

Ms. JAYAPAL. How many slots were allocated to students out of 17? If you don't know the answer, I am happy to provide it to you.

Secretary DEVOS. The negotiating team was put together—

Ms. JAYAPAL. I am just going to, I am sorry, Secretary—

Secretary DEVOS. Was put together by the career staff—

Ms. JAYAPAL. We are only given 5 minutes so let me reclaim my time. I asked you a very specific question. Secretary, let me answer the question that you haven't answered, which is 2 slots out of 17 were provided to representatives of students. How many slots were provided to attorneys general? State attorneys general?

Secretary DEVOS. Again, Congresswoman, the negotiating team was assembled by career staff in accordance to the Negotiated Rulemaking process—

Ms. JAYAPAL. So the answer to the question, the answer to the question is no State attorneys general were on the committee. Why is that important? Because State attorneys general, like mine, Bob Ferguson in Washington State, are some of the biggest players in actually protecting students from low-quality institutions.

Now, I want to go on to talk about the actual list. As I look at the list of who you appointed, and I understand what the process was, there were essentially—the remaining slots were owners of several for-profit colleges, two major accreditors of for-profit colleges, and other industry representatives, and in my mind that is sort of like putting the foxes in charge of the henhouse.

So, let us just talk about the rules as an example of what happened out of this committee. Under the new rules, if a school stops living up to its accreditor's standards, in many cases, because it is providing a subpar education, how long would the accrediting agency have to take action and inform students that there is a problem?

Secretary DEVOS. Congresswoman, as you well know, the Negotiated Rulemaking process requires that—

Ms. JAYAPAL. I am just asking you how long they would take.

Secretary DEVOS. I am not going to comment on the specific recommendations of—

Ms. JAYAPAL. Okay, well, let me—

Secretary DEVOS. The commission—

Ms. JAYAPAL. That is fine—

Secretary DEVOS. I am going to talk about the next steps in the process.

Ms. JAYAPAL. That is not my question and I control the time, Madam Secretary, with all due respect, so—

Secretary DEVOS. I guess you don't really want to have a dialog.

Ms. JAYAPAL. My question was, my question was how long would the accrediting agency have to take action and inform students that there is a problem? The answer to that question, with the rule that you are proposing, is 4 years. Four years is the time that a student is in college. The entire time they could be at an agency that is subpar, that is taking their money, that is taking taxpayer dollars, and yet not even know that is the case. So, let us look at—

Secretary DEVOS. Of course you will have an opportunity to comment during the public commenting period—

Ms. JAYAPAL. Let us look—you will be able to do that if the chairman wants to give you time at the end of my time, but I control my time, so let us look at another rule here, which is, it makes it easier for schools to buy out campuses that shut their doors to students while leaving taxpayers on the hook for outstanding debt.

So, Wall Street investors could come in, they could take over a struggling campus, they could make a profit from that buy-out and then face very limited consequences to actually educate students who paid tens of thousands of dollars. Madam Secretary, I know my time is over, but I would just say that we have to make sure that the Department of Education is protecting our students and our taxpayer dollars, and these rules do not do that. Thank you, Mr. Chairman, I yield back.

Chairman SCOTT. Thank you, Madam Secretary, did you want to comment?

Secretary DEVOS. Sorry?

Chairman SCOTT. Did you want to comment?

Secretary DEVOS. I just wanted to comment that this process will now unfold to a draft rule being released and that you will have ample time to weigh into during the public comment period. That is what the rulemaking process does and that is what we intend to do. And so, if there are issues about which you disagree or others disagree, there will be ample time to weigh into that. The negotiators did a great job. I am proud of the work that they did. I am proud that they reached consensus on a number of different issues that were very wide-ranging and difficult, and I am looking forward to the next steps in that process.

Chairman SCOTT. Thank you. The gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. Thank you for being here. And one of the things I wasn't initially going to comment on here today, but I am a little bit surprised, I am glad you haven't taken the bait and felt that the Federal Government should be a lot more in education than it is, and that you understand our Constitution. I think it bothers me that so many people got out of our school systems and come to see me as a Congressman to help improve their local school districts and they have, first of all, no respect for our constitution and the authority the States and locals have, and almost as sad, they seem to have a complete contempt for their local school districts and State governments and that they want you to send more bureaucrats to run around and look over the shoulders of local administrators, local school boards, so, thank you for your holding your ground.



Do you have any suggestions what we can do to make sure that the next generation of Americans understands the role of Federal Government, the limited role of Federal Government in education under our constitution?

Secretary DEVOS. Well, Congressman, I think there is a great opportunity for all schools to take seriously the, I think, responsibility to prepare young people to be good citizens and to learn about their Nation's history in a way that is current and relevant and practical, and that gives them a foundation on which to then go out and form their opinions and debate ideas.

Mr. GROTHMAN. We have talked before about Ability One programs and State programs in which people with different abilities than ourselves, have an opportunity to experience the satisfaction of work, the ability to earn their own paycheck, and the ability to have a setting in which they are able to socialize with so many people. Right now there are people out there who want to get rid of these, what used to be called shelter workshops and now we call work centers; I wonder if you could comment, in the future if there is a direction the Department would like to go with regard to protecting, not just these work centers, but even more, the people who work in them?

Secretary DEVOS. Well, Congressman, I know that you have a great heart for these individuals and some of the opportunities that are within your district and with regard to the specific guidance that you are asking about, we are still in the process of evaluating and reviewing it, and know that we share the same goal of ensuring that all individuals have, particularly individuals with disabilities, have the opportunity to work in an environment that is challenging for them and that works for them and that they will have choices in that prospect as well. So, we will continue to work together to try to meet that end.

Mr. GROTHMAN. Okay, there are so many tens of thousands of people who enjoy working in their current settings and I know it is so difficult, you get this big job and the number of rules and laws that you are responsible for and the number of employees you are responsible for is overwhelming, do you think you would ever be able to take time out of your busy schedule and tour one of these facilities and see firsthand what is going on?

Secretary DEVOS. I would love to be able to. I know our assistant secretary, Johnny Collett, has and has said that he really appreciated his visit and he gained much greater understanding of the places that you have been referring to.

Mr. GROTHMAN. Okay, now I would like to switch gears entirely to dual enrollment programs and we have got to do what we can to get people in the world of work without excessive student loan debt and, quite frankly, the earlier they get to work in their life, the quicker they will be able to afford a new house, the quicker they will be able to get married and have children.

Do you think an advanced degree can guarantee that students are receiving a high-quality education that can lead to a good job in their field, or do you have a comment in general on what we can do to facilitate dual enrollment programs?

Secretary DEVOS. Well, this administration does support much more robust dual enrollment opportunities as well as supporting a

variety of career paths that, heretofore, really haven't been supported in the ways that we think they should be, and that there is opportunity for so many students to pursue a really meaningful career, that does not require a 4-year college or university degree. And so we will continue to support all of those initiatives that enhance those opportunities and support States and regions in their efforts to specifically address those opportunities in their geographies.

Mr. GROTHMAN. I appreciate you standing up to this special interest and there is money to be made in standing in the way of this dual enrollment programs and the accreditation, but I appreciate you standing up to the people who think the accreditation group comes first and the students come second. So, thank you again for coming over here today.

Chairman SCOTT. Thank you. The gentleman from New York, Mr. Morelle.

Mr. MORELLE. Thank you, Mr. Chairman, and thank you for holding this important hearing. And thank you, Madam Secretary, for your service and for being here this morning, this afternoon.

Since 2014 more than half a million students have been displaced by college closures, and of those, just shy of 85 percent of about 425,000 attended for-profit colleges. In my home State of New York, there were over 13,000 students displaced by for-profit college closures. More concerning are the high percentage of women, Pell Grant recipients, and minorities impacted by these closures. Just in my district, in 2015 the closure of the for-profit school, Everest Institute, left 462 students in chaos.

Many students attending for-profit colleges are working adults with families, often living paycheck to paycheck, while trying to invest in their future and provide a better life for their families, non-traditional students in many cases. And when the schools shut down there are students who fall on even harder times perpetuating the cycle of poverty that many are trying to escape in the first place.

Just last month, 24 schools in the Argosy Chain closed stranding nearly 10,000 students. These closures are yet another, in a long line of major school closings, and aren't likely to be the last. The handling of these closures are poor examples of leadership and with all due respect, I think the Department has missed multiple opportunities to protect students from the hardships of college campus closures, so I do want to discuss those issues.

With previous for-profit college closures such as ITT Tech, the Department required them to post the \$250 million letter of credit to cover costs associated with closing the institution. According to the Department's pre-acquisition review paperwork at the time, Dream Center purchased Argosy Campus in 2017. The Department had roughly a \$100 million letter of credit on file to cover liabilities if the institutions closed, which obviously it had come to a point where that letter of credit would be important.

Was the letter of credit on file with Argosy on the last day of its closure, do you know?

Secretary DEVOS. Congressman, let me just say that schools closing is always unfortunate and regrettable, and our focus with school closures is on students and helping them transfer to another

program if they are able to. We are working closely with every school that is in the process of closing, or has closed, to ensure that those funds that were retained are used appropriately and that students have every opportunity to continue their studies if they choose to and if programs are found for them to be able to continue.

Mr. MORELLE. You know—and I appreciate that. Do you know, though, in response and directly as it relates to my question, do you know whether there was a letter of credit—

Secretary DEVOS. I will be happy to get back with you if you submit a question for the record on that.

Mr. MORELLE. Okay, I appreciate that. I will say that I think it is hard for us to know. There is a lack of transparency around this, however, as evidenced by the Department's court filings in November of 2018, the Department either gave back or let all outstanding Dream Center letters of credit lapse and had no letters of credit on file as of the closure and I find—obviously, I find that troubling. Someone—I dealt with letters of credit, insurance and collateral as a chairman of the Insurance committee in the New York State Assembly, and find this, frankly, if it is true, financially irresponsible.

Mr. Chairman, I ask unanimous consent to submit the following: court filing from November 19, 2018, into the record, showing that no letter of credit was on file with the Department in November of 2018.

Chairman SCOTT. Without objection.

Mr. MORELLE. If I might also, I want to just talk about making hard choices to protect taxpayer dollars which all of us, I know, are very, very committed to, but I am concerned that the allegiance lies with corporations. When there has been an unwillingness to cut funding from critical programs that benefit students and taxpayers. And I am afraid that there is too little required of corporate actors and handing them tens of millions of taxpayer dollars from the Department is apparently, according to the filing, not responsible letters of credit.

Letters of credit help to guarantee that if there are closings that we will have protections for them. And I want to know, Madam Secretary, if you will commit to publishing monthly reports indicating whether schools have letters of credit and whether the Department has those letters of credit on hand and how much they are worth?

Secretary DEVOS. Well, Congressman, let me first say that the school to which you are referring did have appropriate letters of credit, and we are continuing to work closely with schools that are in financial trouble and let me just say that—

Mr. MORELLE. Ma'am, I am sorry, you said you didn't know, but you did. I am sorry, are you amending your answer that they did have a letter of credit?

Secretary DEVOS. The appropriate letters of credit have been in place for the institutions that you are referring to.

Mr. MORELLE. Well, but the court filings that I just submitted into the record indicate, and these are the Department's court filings in conjunction with creditors, that the Department either gave back or let all outstanding Dream Center letters of credit lapse and

that there were no letters of credit on file as of the date of the closure.

Secretary DEVOS. Well, I will be happy to clarify with my staff and ensure that you have the information that you want and need.

Mr. MORELLE. Well, I would like—I appreciate that, and obviously, what I would like to know in addition to that is if there was no letter of credit, what steps you would take to make sure that the liabilities were covered, or if not, who intends to cover those liabilities, and if there is a reduction in the face value of the letter of credit, how you made judgments around any payments or any exposure; because, I assume at some point someone else is responsible for it, whether that is the individual student, or taxpayers, I don't think I understand. So I would like very much some followup from you as to what those letters of credit are, which are protections for students, and frankly, having read some of the stories about students who are lapsed and having spoken with many of them in my office, both in my time as a State legislator and now, it is incredibly troubling.

Chairman SCOTT. The gentleman's time has expired.

Mr. MORELLE. I appreciate that, Mr. Chairman, I yield back.

Chairman SCOTT. Thank you. The gentleman from Kansas, Mr. Watkins.

Mr. WATKINS. Thank you, Mr. Chairman. Secretary DeVos, thank you for your patriotism and your leadership. It is truly an inspiration. I want to start off today by telling you that education is a family profession; my mother, my little sister, my grandfather, were all educators and it is so very important to my family as well as the district that I represent, Kansas Second Congressional District.

So, all education is career education and I know it is critically important to each one of us to increase educational opportunities for every single one of our constituents. I believe our Nation should foster an all of the above education environment, one that is inclusive of all types of learning, institutions, schools, colleges, universities.

As a former student and a current veteran, I know firsthand that America's career education can empower individuals with opportunities for lifelong success. Through their earned benefits from years of military service, student veterans have a wealth of choices available to them for their higher education and career ambitions. Rightfully so, career education colleges like Wichita Technical Institute in my hometown of Topeka, for instance, represent pathways for so many student veterans to achieve their American dream.

So, ma'am, I have a question. Every day we hear from employers seeking to hire more workers but are unable to find them. As a result, many of them are looking to apprenticeships to meet the growing labor market demands. What are some common questions that you hear from employers who are interested in starting an apprenticeship or for work force development programs?

Secretary DEVOS. Congressman, thanks for the question, and let me just add to your first Statement about your family and how important education is. My mom was a public school teacher as well and so we share that.

Our focus continues to be on supporting multiple pathways to great careers and when I speak with employers, most often their question is, how can we engage with educators and make sure that students are prepared for the opportunities we have right now, today. And that is my continued urging to both employers and educators, is that they break down the silos that have existed and begin working together concertedly because there are such tremendous opportunities. And those opportunities really vary region by region, State by State, so there is no one size fits all approach.

But we need to from this level, make sure that the impediments that are there, are broken down to the greatest extent possible and then supported through the programs that are working and programs that aren't should be revised or eliminated and allow the States and local communities to really drive what is needed at the most local level.

Mr. WATKINS. That is very inspiring to hear, thank you for that answer. Mr. Chairman, I would like to yield the balance of by time to Ranking Member Foxx.

Mrs. FOXX. Thank you, Mr. Watkins. Madam Secretary, the President's budget request asked for an increase of 133.1 million over last year's funding levels to administer the student aid programs. The Stated reason for this increase is to help implement your next generation's financial services environment vision, which will update your technical and operational infrastructure to better support students with high-quality service. This all sounds encouraging, however, your agency has been met with lawsuits at every step of the procurement, including now.

These disputes will likely delay your ability to proceed forward before the current student loans services contracts expire. There are over 34 million direct loan borrowers owing over 1.1 trillion who will be affected by the decisions your agency makes this year.

I am monitoring the situation closely because students and their families deserve to know how this will impact their lives. From now on I expect regular updates from you and your staff about this ongoing procurement during which I expect to hear specific and realistic alternative timelines to implementing Next Gen.

While I appreciated Next Gen as a prospective solution, Congress needs to know our programs will continue to be carried through without interruption while you are working on implementation. Thank you very much, Mr. Chairman.

Secretary DEVOS. Yes, ma'am, we hear you.

Chairman SCOTT. Thank you. The gentlelady from Minnesota, Ms. Omar.

Ms. OMAR. Thank you, Chairman. Madam Secretary, countless news sources have reported on the conflicts of interest that run rampant through your top aides, especially those advising you on higher ed and loan servicing. When responding to questions about these conflicts you have failed to adequately convince Congress and the American people that these conflicts do not interfere with the billions of taxpayer dollars flowing from Education to corporate interests. Today I would like to better understand your decisions for selecting aides and ensuring that their conflicts do not harm taxpayers.

Last May, four of my colleagues on this committee sent your general counsel a request for information about conflicts of interest surrounding your \$2 billion Next Gen loan servicing solicitation. Given that this solicitation is given, I would like some information about the team that is leading it. Does Dr. A. Wade Johnson, is he the one that is spearheading this solicitation?

Secretary DEVOS. Dr. Johnson is head of the Next Gen Initiative.

Ms. OMAR. All right. According to the New York Times investigation, Dr. Johnson was the founder and chief executive of a private student loan company, Reunion Student Loan Financing Corporation, before assuming his official role at the department, is that correct?

Secretary DEVOS. I—that probably is correct but—

Ms. OMAR. Yes, it is.

Secretary DEVOS. But let me just interject and say—

Ms. OMAR. I would like to continue.

Secretary DEVOS. And I would like to make clear that—

Ms. OMAR. We will give you some time—

Secretary DEVOS [continuing]. all of the individuals—

Ms. OMAR. I will get to it, thank you so much. Dr. Johnson was also the executive at the two financial services companies, First Data Corporation and TSYS. Additionally, Dr. Johnson has hired at least one other STSYS veteran, Mr. Patrick Fox. Have any of Dr. Johnson's previous employers bid on elements of Next Gen's solicitation?

Secretary DEVOS. Congresswoman, all of my staff, all of my team at the Department of Education and Federal Student Aid has gone through their ethics process, and takes their ethics obligations very seriously. We don't have conflicts and we will not be conflicted. We have continued to have a robust screening process and can stand and be very resolute about that.

Ms. OMAR. Hmm. So, given that there is about \$2 billion per year in taxpayer dollars flowing through this program, will you commit to releasing communication between the procurement team and any of Dr. Johnson's former employees?

Secretary DEVOS. All of the procurement is walled off from the—

Ms. OMAR. That would just be yes or no. Will you be committed to releasing any communication between Dr. Johnson and his former employers?

Secretary DEVOS. Not to releasing internal communication, but the procurement team is walled off from the rest of the team and the procurement process is very definitely prescribed as to how it has to happen.

Ms. OMAR. That has not clearly answered my question. The Federal acquisition regulations have a section on conflict of interest. It States the general rule is to avoid strictly any conflict of interest or even the appearance of conflict of interest in government contract relations.

While many Federal laws and regulations place restrictions and actions of Government personnel, their official contact must, in addition, be such that they would not have the reluctance to make a full public disclosure of their actions. You seem to have reluc-

tance to make a full public disclosure of the actions of the head of the Department's largest single procurement team, despite their being an obvious appearance of conflict of interest. How is your denial to release communication in line with extremely high conflict of interest standards that is required by Federal law?

Secretary DEVOS. The individual you have referred to is not part of the acquisition or procurement team.

Ms. OMAR. Okay. But we need the communication that is happening between the procurement team and the employers of Dr. Johnson.

Secretary DEVOS. As I told you, that process is walled off from any other process.

Ms. OMAR. Well, the public believes that there is a conflict of interest. The investigations say that there is a conflict of interest. If there is the appearance of conflict of interest, the American people have the right to know and make sure that there isn't a conflict of interest. Thank you for your time. I yield back.

Chairman SCOTT. Thank you. The gentleman from Pennsylvania, Mr. Meuser.

Mr. MEUSER. Thank you, Mr. Chairman. Thank you very much, Secretary DeVos, nice to have you with us. Thank you as well for your many years of work, philanthropy, and support of educating America's young people in private schools and in public schools. In Pennsylvania's Ninth District, where I represent, and I think in all districts, the education of our young people is an enormously important component for economic growth and the quality of life.

I know your Department appreciates the importance of helping students explore the many pathways to success whether that be a 4-year university, career and technical education, or vocational schools. We do need to assure that there is an effective plan in place so students can make choices and have options that best suit their skills and interests.

Your Department has demonstrated a commitment to this goal by strengthening CTE, which is very appreciated, and implementing short-term Pell Grants. I am certain that those initiatives have benefited many families throughout my district, so I appreciate it.

Also in my district, we have a school, Conrad Wieser School District, created the Ben Franklin Science Research Institute that fosters STEM education. Secretary, I believe you are familiar with this program from your time serving as the chair of the Philanthropy Roundtable. They are familiar with you, and I certainly appreciate your support of this innovative program as do many. Currently the program uses nonprofit funding to purchase research equipment and opportunities to showcase individual research.

They are in the process, presently, of applying for the Educational Improvement Tax Credit, which is a Pennsylvania program that offers corporations tax credits for donating to organizations for worthwhile STEM programs such as this. I know that the Pennsylvania's EITC credit will help this program grow and improve. Can you speak as to how your Education Freedom Scholarship proposal would allow schools and initiatives such as this across the Nation to create similar opportunities for their students?

Secretary DEVOS. Well, thanks, Congressman. First the Education Freedom Scholarship program will improve education for all students, students who can participate and make different choices for their education. And what it would do is provide States like Pennsylvania, or any other State that opted to be a part of it, create new options and new opportunities so, the programs that you are referring to could be part of a menu of choices given to students in Pennsylvania for their futures and to find their right niche for pursuing their career and their meaningful future.

Mr. MEUSER. Great. They will be very helpful, and they will be put to some very important use for I am sure thousands and thousands of students. And I, as a Member of Congress, do look forward to making the Education Freedom Scholarships a reality.

Mr. Chairman, I yield the balance of my time to Dr. Foxx.

Mrs. FOXX. Thank you very much. I would like to followup on that conversation about the Education Freedom Scholarships.

Madam Secretary, I want to begin by correcting something that a couple of my colleagues on the other side of the aisle have raised regarding the Education Freedom Scholarships proposal. They are disputing your argument that your proposal would not take any funds from public schools. My colleagues seem to believe that individuals' income belongs to the government and should be considered "public money." I could not disagree more.

We as a people have agreed to pay some of our income to the government in the form of taxes, but that does not mean the government is entitled to anyone's income. The Secretary's proposal gives taxpayers greater freedom in how their income, their property, is used to support education. If a State chooses to establish a program and a taxpayer chooses to support it with their income, we should support that choice. We should not claim ownership of that taxpayer's hard-earned money.

Madam Secretary, would you like to say anything else about that?

Secretary DEVOS. Well, thanks, Congresswoman Foxx. I concur with everything you have said. It is an inaccurate statement to say that it is taking public resources. These are voluntary contributions made to scholarship granting organizations to benefit kids, kids and their futures, and that's what it is all about.

Mrs. FOXX. One more quick comment. You showed a great chart a while ago how much the cost and what it is considered a 4-year degree. I would only like to suggest that in 1980 it probably was a 4-year degree, and now it is a 6-year degree, so the cost is even greater.

Thank you, Mr. Chairman.

Chairman SCOTT. Thank you. Mr. Harder.

Mr. HARDER. Thank you, Mr. Chairman. Secretary DeVos, thank you so much for coming to join our committee today.

I wanted to start by asking you to confirm a statement that you made on the subject of literacy. I think in 2017 for National Literacy Month you said, "Reading opens kids' minds and expands their world. Literacy is the foundation of learning and it's the starting point on the pathway to the American dream." Can you confirm that you made that statement?



Secretary DEVOS. If you said I did, I probably did. You are reading from something, so. Sounds like something I would say.

Mr. HARDER. I think it is on the website. Yes. Well, thank you. It sounds like something, I actually happen to really agree with that. I was a late bloomer on literacy; I was not a competent reader until second grade. But I personally benefited from some of the literacy programs funded at the Federal level, and so this is an issue that is very close to my heart.

Do you know how many of our elementary and middle school kids currently are able to read at grade level, according to the most recent national report card, approximately how many?

Secretary DEVOS. Not nearly enough. Not nearly enough. In fact, it is well below 50 percent.

Mr. HARDER. I think it is about a third. Does that sound about right?

Secretary DEVOS. That does sound about right, yes.

Mr. HARDER. So I think we are in agreement about two things. One is that literacy is the foundation of learning, and second, that we are at a time where only one-third of our elementary and middle school kids can read at grade level.

And so can you help explain to me why the budget that you proposed eliminates every single dedicated Federal literacy program, including the Innovative Approaches to Literacy, which provides books to school kids, and the LEARN Program, which helps our school districts develop comprehensive literacy programs, why would you cut those programs at a time like this?

Secretary DEVOS. Well, two things. First of all, we had to submit a budget that was 10 percent lower than the 2019 enacted. And so we chose to focus on programs that were going to most broadly benefit the students who are most in need and most vulnerable, protecting Title IX, protecting IDEA funding, and protecting English as a second language funding.

And to suggest that the Federal Government is going to ultimately solve problems of literacy would suggest that over the last 50 years we would have seen dramatic improvements in literacy. The fact is we have not. The fact is that there is a study that just came out from Harvard and Stanford this week that shows that 50 years, the differences in performance on math, reading, and science tests between disadvantaged and advantaged U.S. students have remained essentially unchanged for 50 years.

Mr. HARDER. What is the second reason?

Secretary DEVOS. I didn't say a second.

Mr. HARDER. You mentioned there were two reasons, one.

Secretary DEVOS. I said the first thing is the budget we submitted. And second, there is this study that shows continued Federal funding to try to fix problems has not yielded the results that we all hoped for.

So our proposal is to pivot and do something completely different. That is why we have proposed an Education Freedom Scholarship that will help.

Mr. HARDER. Well, Secretary DeVos, and sorry for interrupting, I actually think this program's data is pretty clear. This program requires annual reports from its grant recipients, and children that benefit from access to reading materials from infancy to K through

12 have dramatically increased rates of literacy, which are directly tied to this program and its funding.

So I don't understand why you think it is such a hard choice to cut every single Federal dedicated literacy program at a time when only one-third of our school kids can read.

Secretary DEVOS. The reality is that where we are seeing the most gains in terms of student literacy is those States that have decided to focus in on this and have expected that kids read by third grade before being graduated on. We need to focus more on this, but those solutions are best done at the State and local level.

We have continued to pour billions of dollars into Federal funding for education only to see results continue to remain stagnant at best, and in many cases decline, for the students who need the most help.

Mr. HARDER. Well, Secretary DeVos, I hear your words and yet one of the programs that you cut, the LEARN Program, helps those States and local districts develop comprehensive literacy programs to actually solve this problem. And so, you know, look, I think what kills me about this isn't just the context of the fact that we are cutting some of the most critical programs to improve literacy, it is the hypocrisy of what I see from this Department. If you go on the website of the Department of Education right now, the picture is you reading a book to a kid. And that is phenomenal. And you have gone around the country reading books to kids, talking about the importance of literacy. But then you get back to Washington, you go into the cloak of bureaucracy in a back room somewhere and you cut every single program.

Indeed, you actually eliminate every single program fully developed and fully dedicated toward addressing the problem that you are actually saying needs to be solved. And I think that hypocrisy is disappointing, shocking, and frankly, really heartbreaking at a time when we have some real challenges in our educational system.

Thank you, Mr. Chairman, and I yield back.

Secretary DEVOS. And if I could just say that if these problems had been solved by the Federal Government we would have seen different results in the last 50 years. We have not.

Chairman SCOTT. Thank you. The gentleman from Indiana, Mr. Banks.

Mr. BANKS. Thank you, Mr. Chairman. Thank you, Secretary DeVos, for being here today.

I want to start first with a conversation that you and I had before this committee a year ago related to education savings accounts for military families. I think both of us agreed at that time that our military families deserve the best education options possible, yet far too often we hear complaints from military families about the lack of options when they move from installation to installation. Some localities offering a better education and not having better options to choose.

A year ago, when I introduced military education savings accounts you expressed before this committee that the funding source impact, using impact aid dollars, prevented you from supporting that legislative proposal. I took that opposition to heart, and at the time you vowed that you and your team would work with us to try to find better options.

So we reintroduced our legislation this year. And in this year's version there are zero cuts to impact aid. In fact, impact aid is not mentioned at all in our legislation.

I wondered if you maybe could testify for a moment to the virtues of giving our military families better education options and whether you might be able to support this renewed effort without cutting impact aid dollars.

Secretary DEVOS. Well, Congressman, we share the same goals of helping our military families have more choice and more latitude as they do move around so frequently. And we know that there is a huge percentage that actually leave active duty because of this issue. So we have to find a way to give more families more choices.

We have been working with the Department of Defense to see about a pilot program that they might be able to establish to test this out. But I would be happy to work with you, to continue to work with you, on finding a way to fund this in a way that is going to work to meet the needs of military families and work from a budget prospective.

Mr. BANKS. We appreciate your commitment to doing that.

I want to switch gears a little bit to another conversation that we have had before. Last year I sent your Department a letter requesting that you, "Convene a senior level working group to understand how the People's Republic of China attempts to gather U.S. technology on U.S. universities and college campuses, and to develop recommendations for protecting the U.S. technology advantage."

I think we both agree that there is a serious threat on our college campuses today posed by our adversaries who steal our secrets, steal sensitive research on college campuses. Have we seen any progress over the past year since we exchanged letters on this subject?

Secretary DEVOS. Well, I know that there have been a number of meetings between agencies that do touch on students in our country. And we know that there is more concerted or more—I guess, there is more attention to specifics around that on the part of a couple of other agencies that have more direct, you know—

Mr. BANKS. I understand the time that we exchanged letters back in June and July of last year that you received, you or your Department received a briefing from the Intelligence Committee on these threats, is that correct?

Secretary DEVOS. That is correct, yes.

Mr. BANKS. Can you tell us quickly, can you estimate how many of your senior leaders in your Department have a security clearance to receive briefings of this nature?

Secretary DEVOS. I think it is a handful.

Mr. BANKS. Very few.

Secretary DEVOS. Very few, yes.

Mr. BANKS. Could we do more to grant more security clearances to your senior team to dive more deeply into these issues?

Secretary DEVOS. I will be happy to check into that and get back with you.

Mr. BANKS. Last week, Indiana University in my State ended their relationship with the Confucius Institute, MIT dropped

grants from Wawa technologies, again on the same subject. I assume that you see that as progress?

Secretary DEVOS. Well, I know that has been—that the Confucius Institutes, in particular, have been an issue raised as an area of concern, yes.

Mr. BANKS. So due to the briefings that you have received, the information that you have seen on the subject, you agree that the Confucius Institutes, the Wawa grants to college campuses that also do sensitive research poses a threat?

Secretary DEVOS. I think that issue has been raised both in our agency as well as other agencies, and there has been much more increased attention paid to these issues and schools that are taking this threat more seriously.

Mr. BANKS. Has the Department of Education informed or educated college campuses about those threats?

Secretary DEVOS. We have raised the question. The Department of Education's purview really is—extends to college campuses reporting their relationship in terms of gifts and contributions. And we have done much more, I would say assertive about insisting that they be accurate in doing so.

Mr. BANKS. Last week, Acting Secretary Shanahan testified before the House Armed Services Committee. I asked him if he had ever engaged you on this subject. He said no. It is my belief that an intra agency task force between Department of Education and the Army Services Committee and others would be valuable, if not voluntary on your part, something that Congress should require to happen in some form.

So with that, I yield back.

Chairman SCOTT. Thank you. The gentlelady from Pennsylvania, Ms. Wild.

Ms. WILD. Thank you, Mr. Chairman. Good afternoon, Secretary. I have good news. I think we can agree on a point that was made in your opening Statement, and I think I am quoting it properly that "Great education should not be dependent on family income." Is that a correct quote? And I assume that also includes, it should not be dependent on ZIP Code, fair to say.

And can we agree that should be one of the primary goals of the Department of Education, that a good education is not dependent on those factors?

Secretary DEVOS. Yes, that is certainly one of my goals.

Ms. WILD. I have grave concerns that the program that you talked about, the Education Freedom Scholarship, does not bring us closer to that goal. And since it has been several hours since you discussed that proposal, I will remind everyone that this would be a Federal tax credit, dollar-for-dollar tax credit, to encourage voluntary contributions of up to \$5 billion each year for scholarships to elementary and secondary students. And that is called the Education Freedom Scholarship.

But I have to concur with what my colleague Representative Fudge said, that just creates another hole in our Federal budget. Your written testimony that the proposal does not divert a single penny away from public school teachers or public school students is just, with all due respect, inaccurate. Because of course it does. Because it takes away tax dollars that can be devoted to education.

So the other thing about the Education Freedom Scholarship that I have to note is that it is completely dependent on voluntary contributions. And I do not understand how that will lift up poorer States or students in low-income districts.

In response to one of my colleagues from Pennsylvania who made a statement earlier, you responded by saying, and I am from Pennsylvania also, Madam Secretary, "Pennsylvania has had great success in meeting students' needs." Well, I have to differ with you on that.

The students in my district are not all on a level playing field. Indeed, we have a few districts that are terrific, great school districts. But we also have distressed school districts, and those school districts are not likely to benefit in any way from Education Freedom Scholarships because the people who live in those districts, or even in the Commonwealth of Pennsylvania, are very unlikely to contribute money because they simply don't have the wherewithal.

I want to switch gears for a moment. I want to talk about the Every Student Succeeds Act, ESSA. And it is my understanding that it was to strike an important balance in updating K through 12 law by putting States and districts in charge of how to best support struggling schools. But with the expectation that meaningful action would be taken to close persistent achievement gaps.

And I am sure you would agree with me, wouldn't you, Madam Secretary, that you are charged with implementing ESSA through oversight, monitoring, and enforcement of the law's requirements? You would agree with me on that?

Secretary DEVOS. Yes.

Ms. WILD. Okay. I know that the Department recently released 2018 performance reports for six States. And all six from that report were flagged to take immediate action to address significant compliance and quality concerns related to ESSA implementation. And I personally was very troubled by the number and the breadth of the issues that were revealed in those performance reports, particularly the findings that the States are not implementing their approved ESSA plans with fidelity. And that without strong Federal oversight of the accountability measures in ESSA, there is little incentive for States to improve educational outcomes, at least under that law.

So I am concerned that your reorganization of the Department may have diminished further the Department's capacity to conduct adequate monitoring for non-compliance. And I ask if you could comment on that.

Secretary DEVOS. Well, Congresswoman, let me just say that we are committed to ensuring that States implement their ESSA plans per the law, and that they are continuing to raise the bar for themselves and for students. And I have confidence that State leaders and State leadership want to see the best for their students. And we are wanting to be partners with them in ensuring that they are following through on their plans as designated.

And then let me just comment one moment on—

Ms. WILD. Well, I am going to be running out of time and I want to—

Secretary DEVOS [continuing]. scholarship, in fact, that was absolutely—

Ms. WILD. I want to get back to my question, please.

So regarding ESSA, is it your testimony that there has been no reduction in capacity for Department staff that is charged with oversight and monitoring of the States?

Secretary DEVOS. No, the elementary and secondary education staff is very focused on ensuring that ESSA monitoring and compliance—

Ms. WILD. I don't think that answers my question. Because my question wasn't whether they are focused. My question was whether their capacity, because of reduction of Department staff, has been affected?

Secretary DEVOS. No. The capacity is not impacted now.

Ms. WILD. Do you have the same number of Department staff who are still charged with compliance?

Secretary DEVOS. We have had some attrition Department-wide.

Ms. WILD. Do you replace those people who leave?

Secretary DEVOS. The ones that need to be replaced, the positions that need to be replaced, are being replaced or have been replaced.

Ms. WILD. Let me move on. Each State was given 30 days to provide fresh evidence to the Department to resolve those issues. And three States were required to submit amendments to their approved ESSA plans. Has that happened? Have you received that evidence?

Secretary DEVOS. I don't have the specific data on that. I would be happy to get back with you if you would like to submit—

Ms. WILD. Are there deadlines for the States to submit the evidence?

Secretary DEVOS. I am sure there are. And again, if you have specific questions in that area I would be happy with—

Ms. WILD. We will followup with those. Thank you. Thank you, Mr. Chairman.

Chairman SCOTT. Thank you. The gentleman from Idaho, Mr. Fulcher.

Mr. FULCHER. Thank you, Mr. Chairman and Madam Secretary. I represent the State of Idaho, and the culture there is a little bit different than other parts of the country. It has a tendency to be more independent, self-sufficient, so you probably won't hear us make as much noise in seeking Federal help a lot of the time.

But we do have some unique situations there. We have got about two-thirds of our land mass which is federally owned, which takes those resources out, takes property tax off the table, but yet we still have the same constitutional responsibility for providing schools.

And so I wanted to just ask you to speak to perhaps some of the provisions and/or flexibility for using the funds that we do receive, to address some of the unique characteristics of our State. Broadband in rural parts of the State, for example, or enhanced transportation to try to make that more accessible for our student base, that type of thing.

Can you speak to that just with what is in the budget or possible flexibility in those areas?

Secretary DEVOS. Sure. The Every Student Succeeds Act has a provision that actually no local districts have actually applied for

yet, that would allow them to take up to 5 percent of their Title I funding and use it around a student-centered pilot. And that is something that could interject a lot more creativity into how students' needs were met. I would love to see a local district actually take advantage of this flexibility that was built into the law.

And then I would say a companion to that is the Education Freedom Scholarships proposal that, if Idaho were to become a part of that, would give a lot of flexibility around providing transportation for students to get perhaps from a small rural school to a career and technical education center, or to enhance a career and technical education center experience and opportunity for students from a large region, really would give a great latitude to Idaho to be able to craft a program or programs that would be unique to the needs of Idaho.

Mr. FULCHER. Thank you for that. And just to followup, if I may. Along with those maybe a little bit unique needs, in particular in the rural areas, there is a significant percentage of faith-based education facilities and also homeschool. Same question, do these provisions apply in those situations?

Secretary DEVOS. Well, an Education Freedom Scholarship proposal enacted and opted into by Idaho would allow Idaho to address those particular communities and allow for students to choose those or to choose to be supported by those if that is what Idaho decided to use the funds for.

Mr. FULCHER. Thank you, Madam Secretary. I yield the balance of my time to Representative Foxx.

Mrs. FOXX. Thank you very much. Madam Secretary, I would like to pursue the issue of ESSA a little bit.

You have assured us that the Department is carrying out its responsibilities appropriately, State plans have been approved, States are identifying their first batch of low performance schools for improvement, and issuing a national report card on the student and school performance.

Could you update the committee on the support you are offering States and school districts as implementation of the law continues, and expand on anything you were not allowed to say by my colleagues about this?

Secretary DEVOS. Well, thanks, Congresswoman. We have begun to receive waiver requests. And in addition to the regular monitoring and regular updating on ESSA plans and implementation, we are considering these waiver requests. We have received 72 thus far, 50 of them have been approved. Most of them related to the 1 percent alternative assessment cap based on regulations that were finalized under the previous administration. And so we are continuing to work with States as they have amendments to and/or waiver requests for their plans.

And then with regard to the previous exchange here, I just want to again reiterate the fact that contributions to Education Freedom Scholarships are from individuals' funds, they are not taxpayer funds. They are voluntary contributions to be made by individuals or corporations.

And I do not agree with the Congresswoman from Pennsylvania's notion that there would be no participants in Pennsylvania that would want to contribute. I know very much to the contrary be-

cause they have a couple of tax credit programs in the State today that many from within Pennsylvania contribute to. And anyone can contribute to any State in the country, any 501(c)(3) across the country. So those are just fallacies.

Mrs. FOXX. Thank you.

Chairman SCOTT. The gentlelady from Georgia, Ms. McBath.

Ms. MCBATH. Thank you, Mr. Chairman. And thank you, Secretary DeVos, for being here today.

Madam Secretary, on March 13th, myself and 73 of my House colleagues sent you a letter regarding your actions preceding the closure of 24 colleges in the Argosy chain. This issue is very personal to me as one of those now-closed campuses is in my district, leaving constituents of Georgia's Sixth District wanting answers.

Federal court appointed a receiver to wind down operations at Argosy. After reviewing the financial records of the education management corporation sale to Dream Center, the court-appointed receiver stated in Federal court filings that within 60 days of the sale, executives at Dream Center knew that the institutions were, and I quote, "Failing without the hope of redemption."

Chairman, I ask for unanimous consent to enter these court filings into the record.

Chairman SCOTT. Without objection.

Ms. MCBATH. Thank you. Secretary DeVos, my question for you is when did the Department obtain this information?

Secretary DEVOS. Well, Congresswoman, again, let me just say that any school closure is unfortunate, and our focus has always been on helping students in those situations. We have been working with those—

Ms. MCBATH. Secretary DeVos, you are not answering my question. Please answer the question. When did the Department obtain this information?

Secretary DEVOS. About the financial distress of the school?

Ms. MCBATH. The question that I asked is, what I am asking is, when did the Department obtain the information about the closure of these schools?

Secretary DEVOS. Well, we obtained the information when the schools communicated their financial distress. And we engaged immediately to ensure that students were helped in finding alternative programs to transfer to. Our focus, again, was on ensuring that students had opportunities other than the schools that they were going to—

Ms. MCBATH. Secretary DeVos, we know that you did not sufficiently look into the financials of this institution at the time of transfer. Have you investigated the financials of this institution more recently? And also, do you think that you are better equipped to determine the State of the financial situation of a school than a court-appointed official responsible for cleaning up your mess?

Secretary DEVOS. The Dream Center transaction was not approved by the Department. It was still being studied and examined and so there was no finality to a transfer. And the transaction was not formally approved by the Department. So again, school closure are very unfortunate.

Ms. MCBATH. Secretary DeVos, the core function of the Department in college oversight is ensuring the financial responsibility



and administrative capacity of these institutions. Further, it was over a billion taxpayer dollars flowing to those schools annually as of the conversion.

You are sending these schools billions of dollars. If the buck doesn't stop with you, where does it stop?

Secretary DEVOS. Congresswoman, we are very attentive to the needs of every student and every school that is serving them. And the fact is that we have continued to work with schools—

Ms. MCBATH. Secretary DeVos, you are not answering my question.

Secretary DEVOS [continuing]. and let me just say that the previous administration went to war on these schools—

Ms. MCBATH. Secretary DeVos, you are not answering my question. My students in my district and people on this committee deserve to have reasonable answers to reasonable questions. So I am going to go on and ask my second question.

Secretary DEVOS. We have been working with the students in your schools.

Ms. MCBATH. My second question to you is, if students had known that these schools are failing without hope for redemption, do you think they would have enrolled?

Secretary DEVOS. Students have chosen the schools based on the programs offered. And again, it is unfortunate when schools close. We have been working with students from every school to help them find an alternative to complete their programs. If they are not able to do so or they choose not to do so, you know that they will go into the closed school loan forgiveness and that is the process. We are intent on helping students and helping schools in a situation where they are having to be enforced—

Ms. MCBATH. Secretary DeVos, excuse me. You are going to have to deal with the fact that the individual appointed by a Federal judge made that decision. Correct?

Secretary DEVOS. Made the decision. I am sorry, the decision of what?

Ms. MCBATH. Made the decision for closing the schools with no hope for redemption.

Secretary DEVOS. I am sorry, I am not sure I am following your question.

Ms. MCBATH. Okay.

Secretary DEVOS. The receiver?

Ms. MCBATH. Yes, the receiver.

Secretary DEVOS. Well, the receiver stepped into the situation and we have been working with the schools and the receiver appropriately to continue to try to help students find an alternative program to transfer to.

Ms. MCBATH. Okay. Madam Secretary, I just have to say that these are insufficient answers to reasonable questions. The 1,500 students in my district, they need answers. And it is your role to discharge these loans, it is your role to protect those students. These students are counting on you. The Department's failures under your leadership led to this crisis, and I urge you to assume responsibility and take the actions necessary to make these students whole.

I yield back my time.

Chairman SCOTT. Thank you. The gentlelady from Illinois, Ms. Underwood.

Ms. UNDERWOOD. Secretary DeVos, hi. I want to focus on students with significant cognitive disabilities. Like all students with disabilities, they have the right to the same opportunities as their peers without disabilities. Unlike their peers though, students with significant cognitive disabilities may need what's called an alternative assessment so they can access an education that allows them to fulfill their incredible potential.

Research shows, though, that some kids' educational opportunities were being limited by the overuse of alternative assessments for students who didn't actually need them. So ESSA made an important fix by capping the number of students being tested with the alternative assessment.

Now knowing that States would need time to adjust to this new cap, Congress allowed for a waiver for this provision, and that was in 2015. I am deeply concerned that now, in 2019, under your leadership, the Department appears to be rubber stamping States' applications for these waivers, and failing to be transparent.

In the 2017 to 2018 school year, 23 States received waivers for at least two subject areas. Now, under waiver application States must include a plan and a timeline for improvement so they can meet the cap requirement in the future.

Secretary DeVos, I only have 5 minutes, or 4 minutes now, so I am just looking for a number, if you would. How many of those waiver applications have you made public?

Secretary DEVOS. Again, we have received 70 waivers, we have granted 52 of them.

Ms. UNDERWOOD. Right. How many have you made public?

Secretary DEVOS. Based on the regulations from the Obama Administration.

Ms. UNDERWOOD. So how many have you made public, ma'am?

Secretary DEVOS. When the waiver requests are decided upon, they go up onto the website. They are all available when they have been decided.

Ms. UNDERWOOD. So the actual waiver? The actual waiver.

Secretary DEVOS. We don't put the waiver request on the website prior to deciding whether it is going to be approved or denied.

Ms. UNDERWOOD. Okay. So the actual waiver has not been made public. However, this transparency is critical, that is why the information is required. If parents can't be sure that their kids are getting the right assessments, they can't be sure that their kids are getting a good education that allows them to fulfill their full amazing potential.

Will you commit to making these waiver applications public, the actual application?

Secretary DEVOS. No. We are not going to use the website as a filing cabinet. We are going to put the waiver requests, once they have been decided whether they are approved or denied, as we have, we will continue to do so.

Ms. UNDERWOOD. Right. I understand your willingness to release the outcome, we are looking for the application.

Secretary DEVOS. No, we are not going to do that.

Ms. UNDERWOOD. Okay. Your staff has already committed to this in conversations with our committee and our committee staff. Why won't you commit to it here today?

Secretary DEVOS. Well, I will be happy to circle back with the staff, but we have not as a matter of course put the applications on the website, but only the decisions once they have been made.

Ms. UNDERWOOD. Well, I am just asking for simple transparency on something that is really at its core a civil rights issue that your agency is bound by law to implement. So I am really disappointed to hear that outcome, ma'am, and we will be following up on it.

My next question is about the waivers that the States must demonstrate substantial progress toward achieving each component of the prior year's plan and timeline for improvement. As of February 27th, when you most recently provided this information to the committee in writing, you had approved six States for waiver extensions for this school year, 2018 to 2019. Did those States demonstrate substantial progress toward improvement, as required by law?

Secretary DEVOS. Again, we have in total received 70 waiver requests, 17 of them have been denied, 52 of them have been approved. Most of them have been around the 1 percent alternative assessment cap.

Ms. UNDERWOOD. Well what we are looking for, ma'am, is transparency, and that they be made public. There is no way for us to know if you are not willing to release that information publicly. The outcome on its own is not enough. How would stakeholders know progress has been made given that these plans aren't public?

Secretary DEVOS. But they are made public. All of the waiver requests are made public once the decision has been made. It is all public.

Ms. UNDERWOOD. I am looking for the exact number of the waivers that you have approved this year for States that received waivers last year.

Secretary DEVOS. If you would like to submit a question for the record, I will be happy to followup with the specific information that you have required. But I have tried to be accurate in the number of waiver requests we have received, what we have decided upon, and the fact that all of those requests have been put up on the website once the decision has been made.

Ms. UNDERWOOD. Okay. We will be following up. But it seems to me if you are going to come and ask this committee for a certain number of dollars for the upcoming year, that this is a very reasonable question to be asked in this setting, ma'am. And so the punting to the question for the record, I think, speaks to the transparency issue that we have been getting at this morning. Withholding this information does prevent families and educators and IEP teams, these individual education plan teams, from being able to make informed decisions about the education of students with disabilities.

It violates students' civil rights, it violates morality, and it violates both the spirit and the letter of Federal law. And students with disabilities deserve better.

Thank you for holding this hearing, Mr. Chairman, and Secretary DeVos, I will be following up. Thank you.

Chairman SCOTT. Thank you. The gentlelady from Washington, Ms. Schrier.

Ms. SCHRIER. Thank you, Mr. Chairman. And, Madam Secretary, thank you for joining us today.

Your recent appearances have generated considerable media attention regarding the administration's proposal, now for the third year in a row, to eliminate all Federal funding for the Special Olympics. And I just want to say as a pediatrician that I can tell you firsthand that my patients with Down syndrome and with disabilities consider the Special Olympics to be the absolute highlight of their lives. And it takes some special kind of heartlessness to cut funding for the Special Olympics.

And that is why despite wanting to cut that, Congress has consistently funded the Special Olympics for these past 3 years. And we know that funding is safe, but I think the whole discussion really pulled the curtain back on some other cuts that really put families and children with special needs at risk. And these are really significant ones.

So the first is that you have proposed flat funding of Part C of the Individuals with Disabilities Education Act, IDEA. Which in light of increasing need, it really is more like a cut in spending for infants and toddlers with disabilities. And this is a time, you know, again, as a pediatrician, I talked with one of my colleagues this morning, with a remarkable and devastating increase in the number of babies who are born addicted or exposed to drugs in utero, and those are exactly the children who will rely on these special programs. And as a pediatrician I send kids all the time to the zero to three programs. And they do require that.

You have also proposed flat funding of the IDEA Act, Part B. And if Part B were really fully funded, like it is supposed to be, the Federal Government would cover 40 percent of the cost to educate a K to 12 student with disabilities. Now, right now, embarrassingly, we are only funding 14, 14.7 percent, and your flat funding would even cut that further to 13 percent for Fiscal Year 2020. And so I believe we are headed in the wrong direction for the youngest children and for the K to 12 children. And if you put this together with the attacks on Medicaid and on healthcare, because this matters for kids with disabilities.

You say that individuals with disabilities are a priority for this administration, but your actions suggest otherwise. And I was just wondering, given all this, how can you justify that claim that individuals with disabilities are priority for this administration?

Secretary DEVOS. Congresswoman, thanks for that question. We both share love of and desire to help all students, including and especially those with disabilities.

The reality is that we had to present a budget that fell within Congress' caps. We had to cut the budget by 10 percent to meet that. That required making decisions that were difficult. And we propose the budget, but Congress disposes, and so you will decide what you are going to fund and what you are not going to fund.

We wanted to prioritize those programs that were going to most directly help those with the most needs and the most vulnerable:

level funding for Title 1, level funding for IDEA, and level funding for English language learners.

Ms. SCHRIER. As I mentioned—

Secretary DEVOS. Up to \$13.2 billion for IDEA. And I have been before this committee before talking about the fact that Congress, when IDEA was passed, committed to funding IDEA at a much higher percentage than it is today.

Ms. SCHRIER. I hear you. So let me just say, the flat funding is really falling short for the families that I take care of. And really—

Secretary DEVOS. Again, we had to fall within the congressional parameters on the budget. So if, you know, this is something for Congress to address and potentially change.

Ms. SCHRIER. I am going to reclaim some time here because there is another question I really wanted to get to, which is that I am in a district that is very geographically diverse. I have a lot of rural territory, and this concerns rural schools. And this committee recently marked up H.R. 865, the Rebuild America Schools Act. And this supports public school repairs and modernization, things like protecting from lead in the water and black mold and temperature extremes. And I am sure that you know that your own Department has estimated it would cost nearly 150 billion per year to bring schools into just good condition. And these rural schools, you know, almost always have the greatest need and yet the fewest resources. And so even this morning you said, let's see here, "Contrast between \$100 billion for buildings versus \$5 billion for students, and this administration urges the body to invest in students."

I would just remind you that investing in schools or students' learning is investing in students. And that wanting to put this money into—this is really another voucher scheme where you are wanting to take public dollars from public schools, especially in rural areas, and give them to private schools, which don't even exist in those areas.

And so I am out of time, but I just wanted to say this is really a disservice to the rural districts, the rural schools in my district.

Secretary DEVOS. Well, the Education Freedom Scholarships would actually have the potential to help many rural students through course choice, through transportation, through technical education centers. It would provide a lot of opportunity to create—

Ms. SCHRIER. That just don't exist in a lot of these areas.

Secretary DEVOS. That is what this would do would be to help create some new opportunities for them.

Chairman SCOTT. The gentlelady from Florida, Ms. Shalala.

Ms. SHALALA. Thank you, Madam Secretary. I admire your persistence of—I have sat there for hours in my previous life. Thank you for coming.

I would like to begin my questions on a topic of great importance to me and to my community. And that is the equity in IDEA rule known as significant disproportionality.

The IDEA, as you know, requires States to identify school districts that have significant disproportionality for students of color with disabilities in their identification, placement, and discipline. The States have been very uneven in administrating this. So in

2016, the previous administration issued the final regulation to set a long overdue compliance standard for this important statutory requirement.

The regulation actually came out of a large and growing body of research, which I have read pretty carefully, that demonstrated that students of color were being over-identified for special educational services, placed in more restrictive learning environments, and punished with harsher disciplines than their white peers.

Last year you chose to delay this rule despite many of the States that were working toward implementation, and you chose to delay it for 2 years. Shortly after that delay you were sued by the Council of Parent Attorneys and Advocates, and on March 7th, a month ago, the U.S. District Court for the District of Columbia ruled in favor of the parents and students and ordered you to begin implementing this regulation immediately.

Are you implementing the equity in IDEA rule, the significant disproportionality rule, as required by the Federal court order?

Secretary DEVOS. Congresswoman, first let me say thank you for acknowledging the difficulty of being in this seat. But I am concerned that every student receive the services they need. We are currently reviewing the district court order and deciding on next steps. We are moving toward implementation. But I am also concerned about either over-identification or under-identification of students in need of special education services.

So I think we share the same goal of ensuring that students' needs are met. And we are, again, reviewing the court order and moving in the direction of implementation.

Ms. SHALALA. Okay. Moving in the direction of implementation, you have had a month to review the order. The order isn't very complicated, it is only 43 pages. I read it in 20 minutes. I could have written the guidance legislation, the guidance letter for you in a very short period of time.

Is there any reason why you can't do this, send out the guidance, and put the implementation plan in place in the next month?

Secretary DEVOS. Well, let me just say that we feel students need to be treated as individuals and not as statistics or groups. And so we are going to continue to look at the way to implement this, look at the court's decision and ensure that we are moving in the direction of supporting students.

Ms. SHALALA. I understand your point about an individual, but this is standard methodology to treat every student fairly, that is exactly what the rule was set up to do. It is a pretty strong rule. And it is to make sure that, as you said, that great education should not depend on where a student happens to live. To treat students of color, students with disabilities fairly. And that is what the rule was set out to do.

It went through a rulemaking process, every stakeholder had a chance to talk about it. So why can't you implement it, start the implementation process immediately? Why can't you send out a guidance letter right now?

Secretary DEVOS. Well, as you know, working in a large agency, some of these things take more than a couple of days. And so, again, we are continuing to move in the direction of implementa-

tion and we are concerned with every single student and that they not be over identified or under identified.

Ms. SHALALA. Well, you are suggesting to me that you are not willing to follow the law. The court said immediately. And so tell me your timeframe for implementing this court order.

Secretary DEVOS. We are in process of implementing.

Ms. SHALALA. Okay. What is your timeframe?

Secretary DEVOS. Well, I will be happy to get you a more specific timeframe if you would like to—

Ms. SHALALA. Okay. Can you get it to me in the next week?

Secretary DEVOS. I think we can.

Ms. SHALALA. Okay. But it has got to be reasonable. Look, children are suffering. As you well know, equity delayed is equity denied. And if this continues, children are suffering every day. It is very important that we have a very specific timeline for the implementation of this rule.

I yield back my time.

Chairman SCOTT. Thank you. The gentleman from Michigan, Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman. Secretary DeVos, thanks for being here today.

I am concerned about your failure to decide and grant borrower defense applications, what Mr. Takano was talking about earlier, which is supposed to allow students who believe they were defrauded by their college, to apply for loan forgiveness.

As of December 31, 2018, there were 158,110 borrower defense claims pending. And the total number of approved claims had not changed in more than a year: zero approved or denied. I am very concerned by this administration's failure, that the administration is failing to protect our students and denying justice to those who have been defrauded.

Secretary DeVos, I trust you are aware of the court order in *Manriquez v. DeVos* on this matter.

Secretary DEVOS. I am.

Mr. LEVIN. Okay. I will quote from the Federal Student Aid webpage to describe the *Manriquez v. DeVos* decision. "It prevents the Department from collecting on Federal student loans from covered Corinthian borrowers." Okay?

So are you aware that FSA is violating that court order?

Secretary DEVOS. Well, Congressman, we have continued to—

Mr. LEVIN. Are you aware that they are violating the court order?

Secretary DEVOS. Let me just say—

Mr. LEVIN. It is a yes or no question.

Secretary DEVOS. It is not a yes or no answer. We have completed 16,519 eligible borrowers and—

Mr. LEVIN. I know you are reading from the same thing that you said. I am going to reclaim my time.

Secretary DEVOS [continuing]. student loans and automatic closed school discharge—

Mr. LEVIN. I am going to reclaim my time, Madam Secretary.

Secretary DEVOS. Most of those were—

Mr. LEVIN. Mr. Chairman—

Secretary DEVOS [continuing]. Corinthian college students.

Mr. LEVIN. I would seek unanimous consent to enter into the record evidence from Nadine Stewart.

Chairman SCOTT. Without objection.

Mr. LEVIN. Nadine was a student at Everest, a Corinthian subsidiary, and she is protected by that court order from having her loans put in repayment. When she contacted the Borrower Defense Hotline she was incorrectly informed that she had to actively request forbearance. They eventually put her in forbearance, but only after incorrectly insisting that had she not called in, her loans would not have been able to be put in forbearance.

Madam Secretary, do you know how many other borrowers FSA has illegally ordered collections on, in addition to her?

Secretary DEVOS. Congressman, we continue to work very diligently on the whole borrower defense claims issue. We have, as I said—

Mr. LEVIN. So do you know? I don't want you to read your notes again. Madam Secretary—

Secretary DEVOS [continuing]. almost 48,000 that have been approved, and for whom relief has been provided.

Mr. LEVIN. I have heard you read your Statement before to Mr. Takano.

Secretary DEVOS. Well, do you want to have the numbers or do you not?

Mr. LEVIN. Do you have a number of—

Secretary DEVOS. I have numbers.

Mr. LEVIN. A number of—I asked you a question. I am not asking to say any number that you feel like saying. Do you know how many other students like Nadine Stewart were incorrectly collected on by the FSA? Yes or no. Do you have a number? You said you had a number.

Secretary DEVOS. Incorrectly collected on?

Mr. LEVIN. Yes.

Secretary DEVOS. That is not a category that I would—

Mr. LEVIN. I wish you would keep track of that category, Madam Secretary, that would be super for the students of this country.

Reclaiming my time. On March 15, 2019, the Department issued guidance on the 2016 borrower defense regulation. My concern is that the guidance does not State that the Department will enforce the rule against institutions that seek to enforce pre-dispute arbitration agreements against students with borrower defense claims. We are talking about pre-dispute arbitration agreements.

Under the terms of the 2016 regulation, any institution that relies on a pre-dispute arbitration agreement or class action waiver has violated the terms of its program participation agreement with the Department and should immediately lose eligibility. No pre-dispute agreements are allowed.

At least one school, represented by a law firm that is a repeat player with the Department of Education, has forced students into arbitration since the 2016 rule has gone into effect.

Do you commit to revoking the eligibility of schools that rely on pre-dispute arbitration agreements, which are not allowed under the regulations?



Secretary DEVOS. Congressman, we are continuing to address the applications made, both by students that have been part of closed schools and by those who are submitting claims—

Mr. LEVIN. So let me ask you, did Corinthian College use arbitration against students?

Secretary DEVOS. Corinthian College students are—

Mr. LEVIN. They did.

Secretary DEVOS [continuing]. due closed school relief—

Mr. LEVIN. Did ITT use arbitration against students?

Secretary DEVOS [continuing]. and we have continued to address their applications.

Mr. LEVIN. Let me just ask you, did EDMC and Dream Center, with brands like Art Institutes and Argosy, use arbitration agreements against students? Did Vatterott, did ECA, Virginia College and Brightwood? They all did. And I am gravely concerned, Madam Secretary, that these are just some examples of how the Department under your leadership has been less concerned with protecting students than with giving cover to profit-driven actors.

Secretary DEVOS. Congressman, we are concerned with—

Mr. LEVIN. My time has expired.

Secretary DEVOS. We are concerned with not—

Mr. LEVIN. You are not showing it by your actions, Madam Secretary.

Secretary DEVOS. Not only to protect the students—

Mr. LEVIN. What matters is your actions.

Secretary DEVOS [continuing]. but also protecting campuses.

Mr. LEVIN. Mr. Chairman, my time has expired.

Chairman SCOTT. The gentleman from Maryland, Mr. Trone.

Mr. TRONE. Next month is the 65th anniversary of Brown v. Board of Education, the landmark ruling that established school segregation is unconstitutional. The fact of the matter is this is an issue we have stopped discussing, but it is a problem that we have not stopped having.

In 2016, GAO found that public schools have actually become more segregated by race and class than any time since 1960. Unfortunately, we are seeing this in my district. A court recently found that Montgomery County high schools are stratified by income, race, ethnicity, and that an achievement gap between high and low poverty schools has widened.

Madam Secretary, do you believe that racial segregation in public schools poses a threat to the educational opportunity for children of color? Just looking for a yes or a no.

Secretary DEVOS. Congressman, I am concerned about every student no matter where they are and where they go to school.

Mr. TRONE. I know you are concerned about every student, but racial segregation poses a threat for children. That is an easy one. Give me a yes on that one.

Secretary DEVOS. Congressman, I am concerned with every single student.

Mr. TRONE. Madam Secretary, we know that racially isolated schools tend to have fewer resources. Yet last summer the administration rescinded voluntary Federal guidance on student diversity, voluntary guidance, put in place by the Obama Administration.

Part of that nonbinding guidance helped school districts understand how to develop and implement voluntary integration efforts.

You are familiar with the K to 12 diversity guidance document, ma'am?

Secretary DEVOS. Congressman, we continue to be most concerned about all students and—

Mr. TRONE. Are you familiar with that document?

Secretary DEVOS. I am not familiar with that particular document.

Mr. TRONE. Okay. Rescission of that guidance has caused confusion and fear about the intent of the Trump administration, so I would like to give you an opportunity to clarify. I want to be clear that no matter what your action is, Federal law and Supreme Court precedent still stands on the use of race in school assignment.

With this understanding, are you familiar with the case of Parents Involved v. Seattle School District 1, specifically Justice Kennedy's concurrence?

Secretary DEVOS. I am not familiar with that particular case.

Mr. TRONE. Justice Kennedy wrote, "A compelling interest exists in avoiding racial isolation, an interest that a school district, in its discretion and expertise, may choose to pursue." He then went on to State to the Court's decision in Parents Involved "should not prevent school districts from continuing the important work of bringing together students of different racial, ethnic, and economic backgrounds."

Do you agree with Justice Kennedy's comments? Yes or no.

Secretary DEVOS. Congressman, I agree that it is valuable for every student to be in a school setting that has great diversity. I think it is valuable for every student and it is—

Mr. TRONE. Excellent. So you support the autonomy of K to 12 school districts to use constitutionally permitted race-conscious methods to achieve racial and economic integration? We need to be unequivocally clear on this for our local leaders. A yes or a no.

Secretary DEVOS. Well, Congressman, the Supreme Court has opined on this and given parameters around where race can be considered.

Mr. TRONE. So you support the autonomy of colleges and universities to use constitutionally permitted race-conscious methods to achieve racial and economic integration? And your agency will agree not to intervene to stop these efforts?

Secretary DEVOS. Congressman, again, the goal should be to have diversity of every sort. And the Supreme Court has opined in this and has given very clear guidance and direction around this. And we will defer to and obey what the courts have decided.

Mr. TRONE. I will take that is close to a yes.

One last thing, Secretary. We want local leaders to have the ability to improve diversity efforts in their schools if they choose. Would you commit to working with Congress to strike Section 426 from GEPA so that local leaders have the flexibility to use racial and socioeconomic diversity efforts as a means for school improvement under ESSA?

Secretary DEVOS. Congressman, again, our goal is to ensure that every student has an equal opportunity to get a great edu-

cation. Today there are too many kids going to schools to which they are assigned that have no choice to go anywhere else. Students, all students, need to have those kinds of opportunities, not just wealthy ones, not just ones who—

Mr. TRONE. That is great. I don't hear a no, so I think we will work with you together on that. We are in complete agreement.

In closing I would like to leave you with the words of Justice Kennedy's concurrence. "It's an American tradition to continue confronting flaws and injustices in our systems, even if we have made progress already. It is a quality that is that important. This is especially true when we seek assurance that opportunity is not denied on account of race. Enduring hope is that race should not matter. The reality is it too often does."

Thank you, ma'am. I yield back my time.

Chairman SCOTT. Thank you. My colleague from Virginia, Mr. Cline.

Mr. CLINE. Thank you, Mr. Chairman. Thank you, Madam Secretary, for being here today.

Secretary DeVos, as policymakers we hold the responsibility of consistently thinking about how what we do now impacts the future. And one of the best ways this plays out is through the cost of higher education. As you mentioned, the Federal student aid loan portfolio is the largest consumer loan portfolio in America at almost \$1.5 trillion.

I am particularly concerned about the 43 percent that you mentioned are at risk. Unlimited loaning, lending, and granting of money does not provide a true benefit if it is not coupled with accountability and responsibility. And that is by all parties, including students and institutions, lenders, and, in fact, the Federal Government as well.

Market competition needs to open up more options that are straightforward for students, and innovation should be encouraged so that higher ed institutions can create options as well, that actually work for students, and allow them to graduate without insurmountable debt.

I worked very hard in the State legislature in Virginia to create an online bachelor's degree that lowers the cost for Virginia students recognizing that these goals is just the first part of the challenge that we face.

Secretary DeVos, I would asked you, what are we currently doing to ensure that students, institutions, and the private sector, in addition to the Federal Government, are all partners in making higher education accessible and more affordable?

Secretary DEVOS. Well, Congressman, we share the goal of accessibility and affordability for students, and also the concern about the continued rising costs. I would just cite an example, a very, I think worthy example that others should look at and emulate at Purdue University where for the eighth straight year tuition has been held steady, where income share agreements have been introduced as an option for students to participate in.

I think those are creative approaches that other institutions should look at closely, and there should be some robust discussion in this chamber and elsewhere about how to change up the equation so that students—first of all students are not running up stu-

dent loan debt to a point where they cannot afford to pay it off again. And where institutions have some kind of a vested interest in seeing their students succeed and complete.

Mr. CLINE. For someone who is still repaying his law loans I agree with you completely, but I have made sure that when I was looking at how much it was going to cost, whether I could afford to pay it back with the degree that I was pursuing. Because a lot of times, if you are pursuing a degree that is going to give you opportunities for jobs in a certain sector of the economy, that is not going to enable you to pay those loans back in a reasonable amount of time, and you need to reconsider whether that is an appropriate school for you, course of study for you, and plan for you.

So, everybody needs to take a little bit more accountability and responsibility, including the institutions which I believe should—there should be a tie back to how much the institution is charging as it relates to how much the students can borrow. So, I want to make that point as well, and I appreciate your comments.

Mr. Chairman, at this point I would yield my remaining time to the ranking member, Dr. Foxx.

Secretary DEVOS. Congressman, could I just make one comment to—

Mr. WALBERG. I am glad to have it yielded to me as ranking member right now, and I would followup and ask the Secretary if there are some additional comments you would like to add.

Secretary DEVOS. Thank you, Congressman. I was just going to add that we will be adding this fall additional information to the college scorecard that will get at exactly what you have talked about. Providing students program level data by institution so that they can compare between institutions, programs specific to institutions, and see what the cost is, what their likely earning potential is.

And at a program level, this will be much more meaningful than what is currently shared, which is the average cost—I mean, yes, the average earning and the average cost per institution. This will help students be better prepared and hopefully make better decisions.

Mr. WALBERG. if I could continue. Thank you for yielding. Going back to the question coming from the representative from Pennsylvania, about the inability in certain parts of her district of schools, of individuals, having incapability of paying for this education.

Could you address that a little more clearly? The fact that they are not paying for it, it is a tax credit that they will have the opportunity for?

Secretary DEVOS. Right. Indeed, with the Tax Credit Scholarship Program, Pennsylvania would have the opportunity to participate and then formulate programs to either enhance choice programs they have there or create new ones or both, and the district that she was particularly referring to, would be able to participate. Presumably, there would be opportunities to expand the options for students in that district to meet the needs specific to that district.

Mr. WALBERG. Thank you.

Chairman SCOTT. Thank you. The gentlelady from Nevada, Ms. Lee?

Ms. LEE. Thank you, Chairman. Thank you, Secretary DeVos, for being here this very long day. I wanted to talk to you about students who fall victim to predatory schools, and the mechanisms we have in place to help protect them, but also protect abuse of taxpayer dollars.

In Nevada, where I am from, 30 institutions have folded in the last decade alone, leaving thousands of students without a degree, broken futures, and thousands of dollars of student debt.

These institutions, sadly, prey on some of our most vulnerable students, students I have served who are low-income and students of color and often veterans. And there are students like a 22-year-old mother of two named Chelsea, who went to Brightwood to get a nursing degree. She received a Pell Grant, took out a Federal student loan, took out a personal loan, a private loan, not to mention the hours of childcare that she paid for. And as we know, Brightwood closed in December of 2018 leaving Chelsea 11 weeks away from becoming a nurse and \$30,000 into debt.

I just want to ask you, again, a quick yes/no, do you believe, assuming that Chelsea has no viable option to complete her degree, do you believe that students like her deserve a legal avenue to have their loans discharged in these cases?

Secretary DEVOS. Well, Congresswoman, yes, it sounds like if she doesn't find an alternative, she would fall into the closed school discharge category, and her loans will be relieved. Let me just say, though, it is really regrettable the number of institutions that have been closing, and I would say it is due in large part to the policies of the previous administration really going after these entities and these institutions. And we are seeing closures, not only, by those in the—

Ms. LEE. Well, this was actually an institution, it was closed by ACICS, believe it or not. But students who have been defrauded, as you say, do have a legal right through the borrower defensive repayment rule.

Right now you are under a court order to implement this regulation which not only helps get these students the timely discharge of their loans, but also requires the Department to collect information on these institutions that is a predictor of their financial distress. You are then required to use that information to determine, identify these risky schools, and then require them to get a letter of credit that protects taxpayers from their risky behavior.

And my question to you, again, is a yes/no, are you currently collecting this information that allows you to determine if these schools are at risk of going under?

Secretary DEVOS. Well, we are implementing the 2016 rule per the judge's order, but at the same time, we are also working on amending that rule so that it is better reflective of the policies that we believe are more balanced between student and taxpayer concerns because we do not agree that the previous administration—

Ms. LEE. No, it is a court—excuse me, it is a court order.

Secretary DEVOS. Yes. And we are implementing—yes.

Ms. LEE. So, you can't amend a court order. I mean, it is a court order. That it was very clearly, October 2018, very clearly said, you must immediately begin collecting this information, so just a yes/no. I assume you are.

Secretary DEVOS. And yes, we have.

Ms. LEE. Okay.

Secretary DEVOS. I just wanted to say, we are continuing to work on revising the rule in general.

Ms. LEE. Okay. Well, since you are collecting this information, which is great news, I would like to—that means you must have sent a letter of guidance to institutions requesting certain information. And my request of you is, have you sent this letter? And if so, can we receive a copy of it, plus a list of the institutions that you have requested this information from?

Secretary DEVOS. If you would submit a specific question for the record around what specific information you want, we will be happy to give that.

Ms. LEE. I am submitting it right now.

Secretary DEVOS. Okay.

Ms. LEE. The request for the record is, I would like you to give us the letter that you sent to institutions across the country requesting this information. I don't know what information you requested, if we could have that letter and the institutions you sent it to within the next 2 weeks, that would be fabulous.

Secretary DEVOS. I will be happy to provide.

Ms. LEE. Thank you. And that is all I really have. You know, I think that—I want to thank you for being here. I mean, clearly, you know that a lot is at stake, this borrower defense, you know, not only was here to protect students, but it also allows us to protect taxpayer dollars, and so based on your response today, I am glad you are implementing that and collecting that information. We look forward to it.

And I don't have any time to yield. Thank you.

Chairman SCOTT. The gentlelady from North Carolina, Dr. Foxx.

Mrs. FOXX. I'll wait on the time.

Chairman SCOTT. The gentleman from Texas, Mr. Castro.

Mr. CASTRO. Thank you, Chairman. Secretary DeVos, thank you for your testimony. You know, over the last many years, we have had very heated debates and important debates about things like teacher pay, many of us believed they deserve a raise, credentialing in the 1980's and 1990's, and whether students are college ready or substantively prepared to go on to college, and a lot of that debate is centered around testing in States.

But there are important things that happen inside the school but outside the classroom. And in many States like mine, Texas, the ratio of counselors to students is 300-to-1, 400-to-1, or even more.

So, my question to you is, what is your Department doing to make sure that not only are we substantively preparing students to go to college, but actually building an infrastructure to help guide them there?

Secretary DEVOS. Well, Congressman, the Federal Department has a limited role in that regard. States and communities have a much greater role, and we continue to see that in spite of the fact that the Federal Government has been involved with investing billions of dollars over the last 50 years, we have seen no real difference or improvement in outcomes for the students that we purported to help the most.

So, we will continue to work with and encourage and support States in their roles of supporting students—

Mr. CASTRO. Well, I guess I am asking you, what is the Department doing now? A very specific question. What are you doing now to help guide students to college? If the answer is nothing, then it is nothing.

Secretary DEVOS. To help guide students to college?

Mr. CASTRO. To college or their careers, sure.

Secretary DEVOS. We are continuing to support the programs as authorized by Congress that—

Mr. CASTRO. Which programs are you speaking about?

Secretary DEVOS. That will help students, the preparation programs that you have committed Title I funding dollars for, IDEA dollars, English Language Learners, in addition to a host of other programs. We are—the budget for the Department is this year \$64 billion proposed, and so there is a lot of investment in education, and yet we still have not seen the kinds of changes for students, or the kinds of outcomes that one would expect after 50 years of trying to engineer these things from the Federal level.

Mr. CASTRO. But I guess it would—

Secretary DEVOS. Our administration continues to aspire to—

Mr. CASTRO. Let me reclaim my time for a second. But it sounds as though you have given up on the idea—

Secretary DEVOS. Not at all.

Mr. CASTRO [continuing]. that the Federal Government can be helpful. Is that the case?

Secretary DEVOS. Not at all. That is why we propose a pivot to something different through the Education Freedom Scholarship proposal, to allow States and local communities to craft programs that are going to give students that need the most help, the access to choices that they need to make.

Mr. CASTRO. I understand that. And that is a matter of money, right, that is making sure that financial aid is available to somebody. I am asking you a slightly different—

Secretary DEVOS. No. It is a matter of providing different opportunities and choices.

Mr. CASTRO. Right. But it is still about—it is making sure that financial resources are available to someone. I am asking you a different question, which is the infrastructure of having counselors or college advisors or people who are helping guide students. Many of these folks have parents that never went to college. These processes, like applying for financial aid and admissions, are not always intuitive processes. And so what is your Department doing to build that infrastructure or improve upon it? Or are you leaving it all to the States?

Secretary DEVOS. We believe that States and communities have the biggest role to play. They are the ones closest to families, they are the ones closest to students. And we, in fact, believe that empowering students to find the right fit for them for their education is highly important. Those who are wealthy and powerful have those choices and opportunities today. We believe all students should have those opportunities.

Mr. CASTRO. Well, thank you for your response. I would just hope that you all would really think about what your Department

can do to be helpful to students, many of whom are first-time or could be first-time college students in their families and are struggling to figure out the whole process of applying for admissions and financial aid.

Thank you, Secretary.

Chairman SCOTT. And yield time to the chair?

Mr. CASTRO. Of course.

Chairman SCOTT. Thank you. Madam Secretary, you heard the previous question about school infrastructure, that we are hundreds of billions of dollars in need, no heat, no air-conditioning. Is that a problem? And if so, what is your plan?

Secretary DEVOS. Well, Chairman, as I said in my opening Statement we believe that after billions and billions of dollars invested at the Federal level trying to engineer improvement in student outcomes and achievement, that we need to pivot and try something different and empower students at the most local level, to make different choices and decisions.

Chairman SCOTT. Do I understand you to say—did I understand you to say that you do not have a plan for infrastructure for crumbling schools?

Secretary DEVOS. We know that there are schools today that have been empty for years. We know that there are schools that underutilized. It is not about buildings. It is about helping support students to find their path and their fit.

Chairman SCOTT. And so in those areas where there are crumbling schools, do you see that as a problem? And if so—

Secretary DEVOS. Those are State and local issues to really deal with. We know that the States and the communities really are investing in over 90 percent of the funding to education, and so that is really their issue to deal with.

Chairman SCOTT. Okay. Thank you. I think we have gotten your response, that you have no plan for crumbling infrastructure.

The gentlelady from North Carolina, Ms. Foxx.

Mrs. FOXX. Thank you, Mr. Chairman. Madam Secretary, I would like to ask you about the Public Service Loan Forgiveness programs. Is it true that Congress set the terms and conditions borrowers must meet to receive PSLF?

Secretary DEVOS. Yes, that is the case.

Mrs. FOXX. Is it true that the previous administration had 8 years to issue clarifying guidance to students and contractors about PSLF?

Secretary DEVOS. Correct.

Mrs. FOXX. Furthermore, is it true that the previous administration had 8 years in which to spread the word about the requirements of PSLF?

Secretary DEVOS. That is correct.

Mrs. FOXX. During your tenure at the Department, Congress has made available hundreds of millions of dollars to temporarily expand PSLF to those borrowers in the wrong repayment plan. Can you confirm you did not set those terms and conditions, but that Congress determined those qualifications?

Secretary DEVOS. That will be correct.

Mrs. FOXX. Now that we have clarified who exactly is and was responsible for the PSLF Program, I would like to hear from you



about the work your Department has done to make borrowers aware of the program and help them navigate the application process. Could you update us on this work?

Secretary DEVOS. We are continuing to look at and deal with applications for public service loan forgiveness, as you have identified. Congress set up a difficult program, difficult to qualify for. And to date we have had 49,000, nearly 50,000 applications, 32,000 of which do not meet the program requirements and almost 12,000 of them had missing information, so we are communicating with them, letting them know that information is missing.

But as you have identified, Congress set up a program that is hard to qualify for, and we are continuing to address every application. And for those who do qualify we are proceeding with their loan forgiveness.

And as you well know, our budget proposes actually phasing out public service loan forgiveness, because we don't think that one type of a job, one type of role should be incentivized over another.

And Congresswoman, you have used the example yourself, of a nurse that goes to work in a not-for-profit hospital has the chance of qualifying, if they jump through the right hoops, for the public service loan forgiveness, while a nurse that goes to work in a hospital that happens to be organized as a for-profit doing the same kind of work, a public service, does not qualify.

And so we continue to believe that we should be equally incentivizing all students to pursue the direction that is right for them, and not favoring one kind of a role or job over another.

Mrs. FOXX. Well, I think our colleagues have pointed out lots of places that we would like to spend more money, and I think the PSLF Program which is projected to cost \$24 billion over the next 10 years, I think we probably could have found better places to have used that money.

Madam Secretary, let us talk a little bit about NEGREG, and let us see if we can get that straightened out a little bit. You have done a fantastic job today of trying to educate our members on the facts of things. And I appreciate what you have done on that.

But let us talk a little bit about NEGREG and see if we can do a little more educating. Is it accurate that the NEGREG process was established by Congress?

Secretary DEVOS. That is correct.

Mrs. FOXX. Correct. Okay. So, the panel included—isn't it true that the panel included both the student representatives, State representatives, and a consumer advocate each with their own vote?

Secretary DEVOS. Correct.

Mrs. FOXX. Okay. It is my understanding also that the State attorney general did get a chance to weigh in through participation in a subcommittee. Is that correct?

Secretary DEVOS. That would be correct.

Mrs. FOXX. All right. So, the whole purpose of NEGREG is to ensure the voices of the stakeholders are at the table. Is that correct?

Secretary DEVOS. Yes.

Mrs. FOXX. That is how Congress wrote it into the law. Is that correct?

Secretary DEVOS. That is correct.

Mrs. FOXX. So, Mr. Chairman, the Secretary was skewered on the issue a little bit ago, on NEGREG, and I want to make it clear that if anybody wants to skewer anybody on the NEGREG process, it ought to be us because we set it up and not the Secretary.

And with that, I will yield back.

Chairman SCOTT. Thank you. The gentlelady from Massachusetts, Ms. Trahan.

Ms. TRAHAN. Thank you, Mr. Chairman. Thank you, Madam Secretary, for being here.

Funding accessible, high-quality public education is an investment in our children, our economy, and our future. Yet we hear so many heart-wrenching stories in higher education where students and families from communities, like the one I grew up in, are cheated of their dreams.

There are giant for-profits pouring money and resources into ads and recruitment, then collapsing without notice on tens of thousands of students leaving them in debt with useless college credits.

From my own State of Massachusetts 24 colleges have shut their doors in the last 4 years, and 22 of them were for-profits. So, we have an epidemic of schools failing to create contingency plans, wasting taxpayer dollars without answering to anyone on their financial viability.

So it is apparent to me now more than ever that we need protections in place and watchdogs to hold these institutions accountable. Under the last administration the Enforcement Unit was created to investigate abuses and protect students from getting ripped off.

Secretary DeVos, at the start of your time at the Education Department, the Enforcement Unit was adequately staffed with lawyers and investigators who looked into misleading advertising, recruitment practices and job placement claims.

But according to the last update that your staff submitted to this Congress, there are only two full-time investigators overseeing thousands of schools and 130 billion in taxpayer dollars. So, why the dramatic cut? And what specific enforcement actions has this unit of two taken to protect our kids?

Secretary DEVOS. Well, Congresswoman, enforcement was a part of the Department, a part of Federal student aid before a separate unit was set up. It continues to be a very important part of the focus of Federal student aid. We take that very seriously and continue to do so. We are adequately staffed.

Ms. TRAHAN. How many people are in charge of enforcing it?

Secretary DEVOS. I don't have that number here. I would be happy to get that to you if you desire.

Ms. TRAHAN. I would love that. You know, I don't have to tell you how valuable the data is in terms of identifying patterns or indicators for failing schools. And one thing that would be helpful is if the data that has been collected, is something that you can provide to this committee?

So, we have heard plenty today about how we are scrambling to take care of students when these schools shut down. But nothing about preventing these closures from happening in the first place. Is that something you can deliver to this committee?

Secretary DEVOS. I don't—if you have specific data you can—

Ms. TRAHAN. Well, the data that is being collected from the Enforcement Unit.

Secretary DEVOS. All of the data that is being collected?

Ms. TRAHAN. In terms of what is being enforced. I mean, there is a unit of two people who were enforcing—

Secretary DEVOS. There are more than two people involved in Enforcement. If you would like to submit a question for the record that clarifies what information you are seeking, we will be happy to respond.

Ms. TRAHAN. I would like to know the specific enforcement actions by the unit of two, that was set forth in the GAO Report that was last submitted to this Congress?

Secretary DEVOS. Yes.

Ms. TRAHAN. Okay. Great. Let me ask another question. The gainful employment rule is a critical consumer protection tool that protects students from low-quality career training programs and for-profit colleges. Secretary DeVos, did you or anyone from your Department ask Social Security or IRS officials directly or indirectly to prevent or delay the development of an MOU for gainful employment purposes?

Secretary DEVOS. Congresswoman, we have continued to work on the gainful employment regulation. It is one with which we did not agree that policy with the previous administration.

Ms. TRAHAN. That is fair. The question, though, is simple, and I hate to do this, but it is a yes or no. Did you or anybody in your Department talk to, directly or indirectly, with the SSA or the IRS about delaying an MOU for gainful employment purposes?

Secretary DEVOS. I am not aware of that conversation, no.

Ms. TRAHAN. You know, the Department has hidden behind this SSA legal decision as rationale for not implementing gainful employment rule even though we have done so for so many years. Can you share with this committee a copy of that legal opinion from SSA?

Secretary DEVOS. Again, if you want to submit that as a question for the record, I would be happy to respond.

Ms. TRAHAN. I will submit it in writing. You know, I press upon it because this legal opinion directly impacts your ability to protect our college students, which is something we so clearly need today.

Madam Secretary, we have covered a lot of ground today, but given the irresponsible cuts to programs with a proven track record, the weak enforcement of predatory institutions, and your top hires are hailing from the for-profit industry, not to mention the discriminatory policies you have leveled against LGBT students, victims of sexual assault, and students of color.

It is clear to me that you and your Department are either out of touch with people like me who relied on public education and was the first to graduate from college in my family, or you are knowingly putting special interests ahead of our students.

I do not believe in this budget. It reveals that you and your Department are not equipped to set the educational priorities for this country.

Thank you. I yield back.

Secretary DEVOS. If I could just comment, Mr. Chairman?

Chairman SCOTT. Thank you.

Secretary DEVOS. Congresswoman, you have mischaracterized a number of things, and I just want to call that to your attention, and just say that the budget that was submitted, those were proposals, as you know, and you and your colleagues will decide. And so I wanted to make sure to mention both of those things.

Ms. TRAHAN. I appreciate that. But budgets are a reflection of our priorities.

Secretary DEVOS. And we had to stay within Congress' bounds, so we had to submit a budget that was 10 percent lower than last year's.

Chairman SCOTT. Thank you. The gentlelady from Connecticut, Ms. Hayes.

Ms. HAYES. Thank you, Mr. Chair. Thank you, Madam Secretary. I know personally that students, teachers, parents are waiting to hear from you, so I want to move this right along.

So, I am going to let you know that my questions today will be singularly focused on using Federal funds to arm teachers, not about the Freedom Scholarship, not about professional development choice, not about career training.

So, on May 21, 2018, the Superintendent of the Porter, Oklahoma, Consolidated School District, Charles McMann, wrote to President Trump saying, and I quote, "We have implemented and armed staff policy at my school, and was wondering if there is any money or grants that can help. It would be great if there was some money for schools that arm and train their staff."

According to records received through a FOIA request by Democracy Forward, this letter was quickly transferred to the Department of Education for a response and became the subject of several emails and senior staff meetings.

Mr. Chairman, I ask unanimous consent to enter these documents.

Chairman SCOTT. Without objection.

Ms. HAYES. Madam Secretary, did the Department of Education provide a response, either orally or in writing, to Superintendent McMann's request to use Federal funds to arm teachers, yes or no?

Secretary DEVOS. Well, Congresswoman, it is not a yes or no answer. First of all—

Ms. HAYES. Can you respond?

Secretary DEVOS. I am sorry—

Ms. HAYES. No. I am not going to let you do that, I saw you—

Secretary DEVOS. I have never advocated for or against.

Ms. HAYES. I didn't ask that question.

Secretary DEVOS. I am for—

Ms. HAYES. Madam Secretary, my question is, did you respond? And I know you know how to answer a yes or no question because I just saw you answer it from my colleague, Ms. Foxx.

Secretary DEVOS. It is not a yes or no answer because—

Ms. HAYES. I would just like the same courtesy. My question is, did you respond? That is it. Just did you respond, not what your response was. Did you respond? Just did you respond?

Secretary DEVOS. Probably, ultimately, yes. Yes.

Ms. HAYES. Okay. So there is a limited universe of how you could have responded to this request. Either yes, you can use Federal funds to arm teachers; yes, you can use Federal funds to train

teachers; or no, you cannot use Federal funds to do any of these things. Do you know how your office—

Secretary DEVOS. Congresswoman, Title IV was set up for States to decide how to use the funds.

Ms. HAYES. Do you know—I am not there yet.

Secretary DEVOS. It was set up for States to decide—

Ms. HAYES. You are jumping way ahead.

Secretary DEVOS [continuing]. not for the Department of Education.

Ms. HAYES. So, the Department of Education can't decide how Title I funds are used?

Secretary DEVOS. Title IV funds are to be decided—

Ms. HAYES. I am sorry. Title IV, I am sorry.

Secretary DEVOS [continuing]. are to be decided by the States. That is how Congress set it up, and that is how we have totally respected that particular set up.

Ms. HAYES. So, your position is that Title IV funds, it is not up to you to decide how they can be used?

Secretary DEVOS. We have not advocated for, nor against, and have—

Ms. HAYES. Do you feel like you can though?

Secretary DEVOS. No. Congress set this up. The Department of Education did not.

Ms. HAYES. Okay, thank you. Thank you. So, in August of 2018, it was reported by the New York Times and other outlets that the Department was considering the use of Federal funds to arm teachers. In all of your previous statements and even just now, you have maintained that you lack the authority to approve or deny requests to purchase firearms for school staff and taxpayer money and using taxpayer funds under Title IV-A.

Secretary DEVOS. That is correct because it is the State's decision.

Ms. HAYES. That is correct, thank you, Mr. Chair. In the documents I have just submitted, there are emails from staff at your Department that discuss a decision memo on IV-A. Are you familiar with that decision memo?

Secretary DEVOS. I am not with whatever memo you're citing.

Ms. HAYES. Okay, so I will tell you what it says. On page 4 of the memo that came out of your Department with the advice of your general counsel it says, "The Department's Office of the General Counsel has advised that the Secretary has discretion to interpret the broad language of the statute as to its permissiveness regarding the purchase of firearms and the training and use of firearms." It continues on page 7 to say, "It is, therefore, reasonable for the Secretary to disallow this particular use of funds absent, absent, specific congressional authorization. And it is unlikely that this interpretation would be subject to a successful legal challenge."

That is from your Department based on advice from your legal counsel. In light of the contents of this memo—

Secretary DEVOS. And as I have said, I have neither advocated for nor against—

Ms. HAYES. No, you are absolutely right, you have not advocated for or against. But in light of the contents of this memo, you have the ability to make a decision. Your silence is a decision. You

have the authority to say that we cannot use Federal funds to arm teachers. You are in line for Presidential succession—

Secretary DEVOS. States and local communities.

Ms. HAYES. Make a decision on this. You have the authority to do it. Will you prohibit the use of Federal funds to arm teachers, yes or no, Madam Secretary?

Secretary DEVOS. This is a matter for States and local communities to decide upon.

Ms. HAYES. You have the authority to do it. Read your memo.

Secretary DEVOS. Congress has the authority to make that decision.

Ms. HAYES. You have the authority if you so choose. Read the memo.

Chairman SCOTT. Does the gentlelady offer those documents for the record?

Ms. HAYES. I do, I would like to submit these documents for the record so that the Secretary has the opportunity to read the memo that came from her office.

Chairman SCOTT. Without objection. The gentleman from California, Mr. DeSaulnier.

Mr. DESAULNIER. Thank you, Mr. Chairman. I want to thank you and the ranking member and the Secretary. We are almost through, Madam Secretary. I also want to acknowledge my friend, the ranking member and occasionally when we disagree, we do it in the spirit of friendship. So, I want to talk about public service loan forgiveness. This is the general—the GAO report on this. The Congress appropriated \$2.3 million for 2018 and 2019 to help with the problems that the ranking member alluded to in her comments.

Now, this is in the context when I will respectfully disagree with her that this program, the first cohort that qualified for this program came about when your administration took place. So, Congress authorized this act, it is a statute and as you have recognized in your testimony, Congress does have a role in governing the Department of Education. This is a Federal law.

You indicated in your comments when the ranking member was questioning you about this that, and I am inferring here, that you didn't think it was the best thing to decide what professions people go into. With all due respect, I don't read the statute as giving you that subjectivity. It is a statute if you want to change the statute, you should get a member to introduce something that will eliminate it.

So, first question is how have you expended this \$2.3 million and how do you plan to expend it, because Congress gave it to you to help with the outreach given that only 1 percent of people who apply for this qualify. And I will say this in the context of my interest is personal because our district office in Northern California has had multiple people who were told by the service provider that they qualified. They made a decision. For 10 years they went into public service, the law is what it is and now they are being told that they don't qualify. You can imagine if you are living paycheck to paycheck and you made this career choice, I would imagine, that would be difficult. So, if we are going to change the law, we should do it constitutionally as prescribed. So, the question is, how have you spent the money?

Secretary DEVOS. Well, Congressman, first let me say I acknowledge it is not the Department of Education's role to change the law, it is your role to do so if that is to happen. That is why it is part of our budget proposal. But with regard to the actual implementation of and processing of applications, we are continuing to do so diligently. As I said before, this is a very—

Mr. DESAULNIER. Pardon me, you are claiming my time, Madam Secretary and I don't want to be disrespectful.

Secretary DEVOS. But this is very difficult.

Mr. DESAULNIER. I had a specific question, how are you spending the money. So, if you could help me with specificity and I ask this question in the spirit of, I would like to fix the problem and I would be happy to work with you on it, given that the statute is the statute. People are suffering, they have been misled, so how do we help you administer the law properly? That is the spirit I ask the question. How are you spending the money?

Secretary DEVOS. The program is a very difficult one to qualify for. 10 years before you even are considered, and 120 consecutive payments. If someone makes a payment,—

Mr. DESAULNIER. Madam Secretary, no, no, no.

Secretary DEVOS. Can I just tell you one of the problems here?

Mr. DESAULNIER. No, you cannot because I had a specific question.

Secretary DEVOS. Well, if you want to know the problem I have to be able to tell you.

Mr. DESAULNIER. Yes, but I want to be clear as to what I am asking. So, I have two simple questions. How are you spending the money that Congress appropriated for you in this Fiscal Year to help with communication? It was to get the service provider to help today if somebody calls. I acknowledge that you think it is complicated.

Secretary DEVOS. The temporary program.

Mr. DESAULNIER. So, how did you spend it, No. 1?

And No. 2, so I don't have to interrupt you again, if you could just answer the questions, I would be satisfied. I don't—my mother taught me not to be rude and I am not trying to be rude. Second question is are you going to implement the four recommendations in the GAO report and do you have a timeline to do it as suggested by the GAO? Two questions. What are you doing with the money to help facilitate communication with the servers and when are you going to implement the GAO recommendations?

Secretary DEVOS. For the \$2.3 million, we will answer on a question for the record in detail. I don't have all of those details here with me.

Mr. DESAULNIER. That would be good.

Secretary DEVOS. So, I will be happy to provide those. But with regard to the program itself, the temporary program was a great step by Congress. However, it still doesn't take care of the fact that it is a very difficult program to qualify for. And if a student pays their loan a year in advance, that is not looked at as 12 payments, that is 1 payment. So, 120 consecutive payments doesn't quite add up then over 10 years.

Mr. DESAULNIER. Are you using the money so that the service provider can communicate this to that—

Secretary DEVOS. Yes, of course.

Mr. DESAULNIER. Okay, that is what the question was. To the degree that you can provide that to the committee in specificity, that would be appreciated. Second part is, when are you going to implement the general county offices recommendations?

Secretary DEVOS. We have implemented all of them to my knowledge.

Mr. DESAULNIER. That is not what the GAO says. So, can we get that straight, please? And with that, seriously, my office would like to work with your office. Your acknowledgement the statute is the statute—

Secretary DEVOS. I would welcome that.

Mr. DESAULNIER. People are suffering right now in terms of what we are telling them. And rather than bait and switch, we should help them as much as possible, I am sure you agree. And then if we need to change the statute, we are more than willing to work with you. Thank you, Madam Chair, I yield back.

Chairman SCOTT. Thank you. I think this is the final questioner. The gentlelady from Michigan, Ms. Stevens.

Ms. STEVENS. The gentlelady from Michigan addresses the Secretary of Education. I would like to talk to you a little bit about our home State of Michigan. Where decades of disinvestment in our schools has had an impact on our students. From 1995 to 2015, Michigan ranked last in total education revenue growth. And not surprisingly since 2003, Michigan ranks last in proficiency growth. And your budget proposal for the Department of Education requests an \$8.5 billion decrease in spending and eliminates 29 programs. Do you mind explaining how disinvestment of this scale will serve our country's students when it has failed in Michigan?

Secretary DEVOS. Well, Congresswoman, we had to submit a budget that did reduce our overall spending by 10 percent because of Congress' requirements to hit those caps. So, we were following Congress' mandate in that regard. And we had to make difficult choices around what areas to propose cutbacks in. These are all proposals and you will all decide what you are going to spend. So, we submit them to you as proposals acknowledging that we tried to hold harmless those programs that are going to most benefit and most reach students who are most vulnerable and most in need of the assistance.

Ms. STEVENS. And we certainly don't like to make determinations around which programs are successful versus which ones aren't just because of legacy considerations. I was particularly inspired by my colleague, Congressman Harder's questioning and around literacy which is certainly a pervasive issue in Michigan. And, you know, we don't cut fire departments or police departments just because crime is going up, you know, we figure out a way to double down and work together.

My district is home to wonderful communities. I am a product of our public school system. I graduated from Seaholm High School. I don't know if you have ever had a chance to visit Seaholm.

Secretary DEVOS. I have not but I have had friends that graduated from Seaholm.

Ms. STEVENS. Excellent. Well, you know, one of the things in Michigan is we have the per pupil funding standards. And, you



know, it strikes me that just because you are a resident of Birmingham, Michigan, and, you know, able to send your children to Seaholm, it shouldn't mean that if you are a resident of Detroit, per se, that you shouldn't have the same opportunities. You should be able to send your student to the same quality school. Is that what you would agree with?

Secretary DEVOS. Well, I think every student should be able to find a school that works for them, yes.

Ms. STEVENS. Right. And so, your budget proposes to eliminate billions of dollars in K-12 programs from professional development for teachers and principals to after school programming to mental health services and one of my personal favorites, STEM education. And obviously, we have heard you talk about some of the hard decisions that you have had to make yet somehow, we found, you found, \$60 million for an increase in the Federal Charter School program. And I just really wonder if charter schools are the answer here where as it really should be the Title I funding.

So, a recent report by the Network for Public Education found that more than \$1 billion in Charter School Program funds have gone to support charter schools that have either, you know, they never opened or they have closed, they have kind of abandoned some of the children and families. And since 2010, 25 schools in Michigan that have received \$1.7 million in charter school funding just never even opened. And the Inspector General found waste, fraud, abuse due to the frequency of school closures in the Charter School Program.

Can you just explain for me the mark of effective programs here and can you justify the proposed increase for the Charter School Program and on what measures or studies that you have been using?

Secretary DEVOS. Let me first comment that the study you are referring to, I am not sure we can even call it a study. We are looking more closely at it, of course, and anything that is truly waste, fraud, or abuse, we will certainly address. But the reality is that study was really funded by and promoted by those who have a political agenda against charter schools.

And the other reality is that there are currently over a million students on wait lists for charter schools in the country. So, we want to see more charter schools not fewer. More students that can access options that are right for them, not fewer.

Ms. STEVENS. At the expense of public education funding?

Secretary DEVOS. Charter schools are public schools.

Ms. STEVEN. I would just say with the remaining seconds that I have left that roughly 20 percent of my district is under the age of 18 and those individuals are counting on us. And we are here to have some tough discussions about how we can improve the lives of our students and educational outcomes. And I very much appreciate that the title of this hearing, Examining the Policies and Priorities of the U.S. Department of Education, revealed some of your priorities to us. Thank you.

Chairman SCOTT. Thank you. We have come to the end of the hearing and I want to remind my colleagues that pursuant to committee practice, materials for submission of the record must be submitted in proper form within the next 14 days. I want to remind

the Secretary, that she will be receiving questions for the record and the hearing record will be held open for 14 days to receive your responses. And pursuant to committee practice, witnesses, witness questions for the record must be submitted to committee staff within the next 7 days.

I now recognize the ranking member, Dr. Foxx, for your closing Statement.

Mrs. FOXX. Thank you, Mr. Chairman. Madam Secretary, thank you for your participation in this hearing. It is clear to us on the Republican side of the aisle that you are committed to implementing the laws as Congress wrote them. It is also clear to us you are doing everything in your power to help students and families understand and pursue the education opportunities they choose so they may realize the American dream. And for that, we and the American people are grateful for your tireless efforts.

In the Higher Ed Accountability hearing, Representative Adams gave us all a definition of bipartisanship. This hearing could use a working definition of accountability since that is the entire premise behind having a cabinet official testify. Accountability is asking an agency official a tough question and listening for the answer before deciding they are wrong, is not grilling the witness and talking over them the moment you don't here what you wanted to hear.

My Democrat colleagues have tried for the better part of 4 hours to twist your words out of context. After doing so, they did not allow you to respond and instead, filled the time with what they wanted to hear. Chairman Scott, the gentleman that he is, has tried to correct this on a few occasions this afternoon and I thank him for that courtesy.

This is a gotcha hearing, not an honest attempt to learn how the government can better serve students. The arrogance exhibited in this committee today has been breathtaking. Indeed, rarely have I heard so many people tell you how to do your job and say they know how to do it better than you do. In your opening comments, you reminded us of Congress' commitment when the Department of Education was created 40 years ago. You reminded us that at that time, Congress vowed that it would "not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved from the States." I promise you; I am going to start quoting that a lot and I thank you for bringing it to our attention.

I have to tell you, a lot of the things I am hearing my Democrat colleagues try to get you to commit to doing sounds a little bit of a set up. They want you to commit to doing what we all agreed decades ago was not the mission of the Department of Education. And they argue that you are not doing your job because you haven't overstepped your authority or don't agree with their priorities.

Madam Secretary, you said today that if a school does not serve the best interest of students, it should not continue to operate. I could not agree with you more. This is especially important when it comes to overseeing institutions of higher education.

Republicans are equally committed to holding all institutions accountable for the educational outcomes of their students. I look forward to working with you to reform the HEA to make sure all stu-

dents at all institutions get the service they deserve. And when we bring out some other statistics that haven't been brought out, I think we will see the need to hold all institutions accountable. You have a number of tools at your disposal to come down on bad actors. As I said, any institution that does not serve students should not continue to exist and you said as much earlier in the hearing.

I want to thank you for your commitment to implement policies in the best interest of students and taxpayers. You should know, as I hope you already know, that Republicans look forward to standing with you to protect students access to educational opportunities to make a better life for themselves and I would welcome our Democrat colleagues to make the same commitment. I yield back, Mr. Chairman.

Chairman SCOTT. Thank you. And Madam Secretary, I want to thank you for being with us today. You will be receiving, as I indicated, questions for the record to clarify some of the things that came up. One of the areas you can expect questions would be the reinstatement of ACICS. We had asked you questions about this before, particularly in light of the fact that there seem to be—they seem not to qualify under the rules for reinstatement.

And also, questions about the subsequent firing and reinstatement of the Inspector General which appeared to be part of that same process.

You were asked about the Obama guidance that was rescinded under your administration on racial diversity K-12 and higher education and you seemed to be a little unclear on that. We will be following through to see what you are doing on that particularly in light of the GAO report.

There are two court orders that are pending, one on the equity and idea rule. The court has ordered that be implemented immediately. Another on borrowers defense where there is a court order and there are over 100,000 students waiting for relief.

There was a question on the waivers and what information is being published. It appears to me that what is being published is the fact of the waiver, not the application to see what was being waived or the rationale for the decision. And so, we will be following up on that.

And ESSA implementation, you indicated that you are following the rules but we were informed that several States are failing to disaggregate data by race which would make it impossible. If they are not providing that information, you can't ascertain whether there are achievement gaps or if anything is being done. We will be following through on that.

And finally, the tax credit program where you said it is contributions. With 100 percent tax credit, it is not a contribution because it is 100 percent reimbursed as a tax credit. We have also indicated if you could find \$5 billion in the tax expenditure, at the same time we are cutting the education budget \$8 billion, you frequently referred to the fact that the budget is being cut 10 percent. We were required to cut 10 percent but, in fact, the budget was cut 12 percent which meant that maybe some of those literacy programs and others would not have to be cut.

But you will be getting those questions and we can clarify those answers. But I wanted to express my appreciation for your being

here. We apologize for the time taken to go vote and that extended the time a little bit. I want to thank the Ranking Member for being here the whole time and thank you, Madam Secretary, for being with us and allocating time so that everybody could ask questions.

With that, is there any further business before the Committee?  
If not, the committee stands adjourned.

[Additional submissions by Mr. Courtney follow:]

MEMORANDUM

TO: {INSERT Vendor Contact Name and address}

FROM: Patrick A. Bradfield  
Director, Federal Student Aid Acquisitions  
U.S. Department of Education

DATE: December 27, 2017

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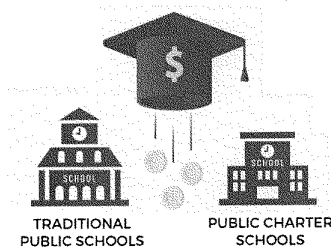
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Department of Education OIG

Reissuance of Final Audit Report, "Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans," Control Number ED-OIG/A05Q0008

<https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf>

[Additional submission by Mrs. Foxx follows:]



**A Good Investment:  
The Updated Productivity  
of Public Charter Schools  
in Eight U.S. Cities**

Corey A. DeAngelis

Patrick J. Wolf

Larry D. Maloney

Jay F. May

April 2019

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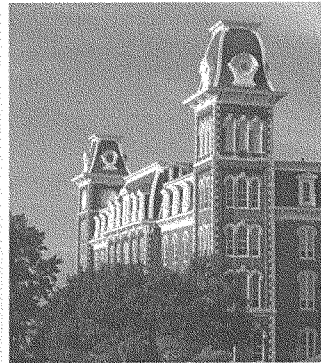
April 2019

School Choice Demonstration Project  
Department of Education Reform  
University of Arkansas  
201 Graduate Education Building  
Fayetteville, AR 72701  
479-575-5475

<http://www.uaedreform.org/a-good-investment-public-charter-schools-in-8-us-cities/>

**The University of Arkansas**

was founded in 1871 as the flagship institution of higher education for the state of Arkansas. Established as a land grant university, its mandate was threefold: to teach students, conduct research, and perform service and outreach.



The College of Education and Health Professions established the Department of Education Reform in 2005. The department's mission is to advance education and economic development by focusing on the improvement of academic achievement in elementary and secondary schools. It conducts research and demonstration projects in five primary areas of reform: teacher quality, leadership, policy, accountability, and school choice.

The School Choice Demonstration Project (SCDP), based within the Department of Education Reform, is an education research center devoted to the non-partisan study of the effects of school choice policy and is staffed by leading school choice researchers and scholars. Led by Dr. Patrick J. Wolf, Distinguished Professor of Education Reform and Endowed 21st Century Chair in School Choice, SCDP's national team of researchers, institutional research partners and staff are devoted to the rigorous evaluation of school choice programs and other school improvement efforts across the country. The SCDP is committed to raising and advancing the public's understanding of the strengths and limitations of school choice policies and programs by conducting comprehensive research on what happens to students, families, schools and communities when more parents are allowed to choose their child's school.

## A Good Investment: The Updated Productivity of Public Charter Schools in Eight U.S. Cities

### Executive Summary

In 2015-16, the United States spent over \$660 billion<sup>1</sup> on its public education system in hopes of providing children with greater opportunities to excel academically and to improve their life trajectories. While public education dollars have risen at a relatively fast pace historically, future challenges, including underfunded pension liabilities, suggest policymakers should economize wherever possible.<sup>2</sup> Meanwhile, the number of public charter schools has increased exponentially. From 1991 to 2018, charter school legislation passed in 44 states and the nation's capital, and student enrollment in charters increased to around 3.2 million.<sup>3</sup>

Since educational resources are limited, we examine which types of schooling offer society the biggest "bang for the buck." Both cost-effectiveness and return-on-investment (ROI) analyses compare the productivity of different organizations providing a similar service – in this case, public education. Cost-effectiveness is "the efficacy of a program in achieving given intervention outcomes in relation to the program costs."<sup>4</sup> Return-on-investment (ROI) is:

*A performance measure used to evaluate the efficiency of an investment or to compare the efficiency of a number of different investments. ROI measures the amount of return on an investment relative to the investment's cost. To calculate ROI, the benefit (or return) of an investment is divided by the cost of the investment, and the result is expressed as a percentage or a ratio.<sup>5</sup>*

We examine the differences in cost-effectiveness and ROI for public charter schools and traditional public schools (TPS) in eight major U.S. cities: Atlanta, Boston, Denver, Houston, Indianapolis, New York City, San Antonio, and the District of Columbia. We determine how much money is

invested in public charter schools and TPS, what levels of student achievement are attained across the two public school sectors, and how much economic payoff our society can expect to receive as a result of the educational investments in each sector. This report is an update to our first study examining these differences across the United States at the city level.<sup>6</sup>

We calculate the cost-effectiveness of the charter and TPS sectors in each city by taking the average National Assessment of Educational Progress (NAEP) scores achieved by each city and dividing those scores by the city's respective per-pupil revenue amount. Our cost-effectiveness measure is the amount of NAEP math and reading points generated from each \$1,000 in per-pupil revenue committed to each sector.

Our determination of the return-on-investment (ROI) in the public charter and TPS sectors requires additional data. We use information about the expected economic benefits accrued from spending 13 years (K-12) in each of the sectors to make that calculation. We also provide a hybrid ROI estimate based on a student spending 6.5 years in the charter sector and 6.5

years in the TPS sector. Since higher student achievement is associated with higher lifetime earnings, we are able to divide the cognitive impact of the K-12 educational experience by the cost-of-investment for each sector to calculate city-level ROIs. Finally, we provide cross-city and student-weighted averages for public charter and TPS cost-effectiveness and ROI based on our sample.

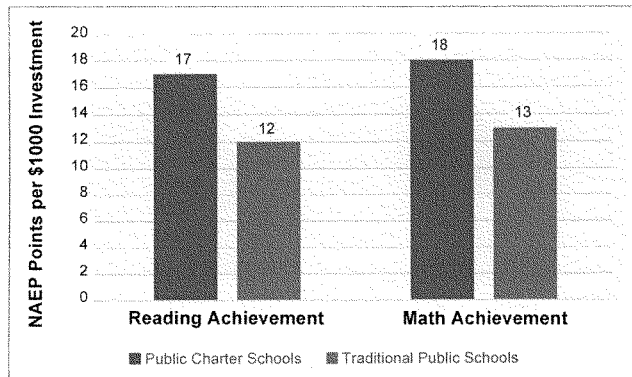
Overall, we find that public charter schools outperform TPS on both productivity metrics overall and for all eight cities. Specifically:

- In all eight cities, public charter schools outperform TPS in both math and reading cost-effectiveness;
- The public charter school sector delivers a cross-city average of an additional 5.20 NAEP points per \$1,000 funded in reading, representing a productivity advantage of

36 percent for charters, while the student-weighted public charter school advantage of 4.80 points per \$1,000 represents a cost-effectiveness benefit of 40 percent;

- The public charter school sector delivers a cross-city average of an additional 5.55 NAEP points per \$1,000 funded in math, representing a productivity advantage of 36 percent for charters, while the student-weighted public charter school advantage of 5.13 points per \$1,000 represents a cost-effectiveness benefit of 40 percent;
- The cost-effectiveness advantage for charters compared to TPS regarding NAEP reading scores ranges across the cities from 5 percent (Houston) to 96 percent (Atlanta);
- The cost-effectiveness for charters compared to TPS in terms of NAEP math scores ranges from 5 percent (Houston) to 95 percent (Atlanta).

**Figure ES 1: NAEP Points per \$1,000 of Funding in Public Charter Schools versus TPS, 8-City Weighted Average**

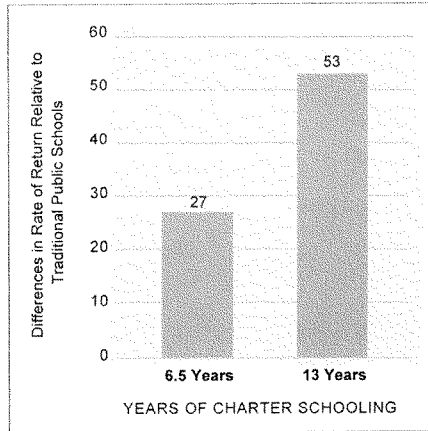


*Note:* Revenue data pertain to the 2016 Fiscal Year, which aligns with the 2015-2016 Academic Year, and are adapted from Charter School Funding: (More) Inequity in the City, by DeAngelis et al., 2018, <http://www.uaedreform.org/charter-school-funding-more-inequity-in-the-city/>. NAEP achievement data are from 2017 and are adapted from <http://nces.ed.gov/nationsreportcard/naepdata/dataset.aspx>. Overall results are calculated by weighting city-level results by student enrollment in each sector.

Our return-on-investment (ROI) analysis finds:

- In all eight cities, public charter schools outperform TPS in standardized test scores despite receiving less funding per pupil.
- On average, each dollar invested in a child's K-12 schooling in TPS yields \$4.41 in lifetime earnings compared to \$6.37 in lifetime earnings from each dollar invested in a child in public charter schools, demonstrating a 45 percent public charter school ROI advantage.
- The student-weighted average charter school advantage in ROI is \$1.99 or 53 percent.
- Spending only half of the K-12 educational experience in public charter schools results in \$4.77 in benefits for each invested dollar, an 18 percent advantage relative to a full-time (13 year) K-12 experience in TPS or 27 percent if student-weighted.
- The ROI advantage for an entire K-12 education in public charters compared to TPS ranges from 7 percent (Houston) to 102 percent (Atlanta).

**Figure ES 2: Additional Percentage ROI for Public Charter Schools Relative to TPS, 8-City Weighted Average**



*Note:* Revenue data pertain to the 2016 Fiscal Year, which aligns with the 2015-2016 Academic Year, and are adapted from Charter School Funding: (More) Inequity in the City, by DeAngelis et al., 2018. <http://www.uaedreform.org/charter-school-funding-more-inequity-in-the-city/>. Achievement data are standardized relative to the state overall and cover 2006-07 to 2011-12 and are taken from the Center for Research on Education Outcomes (CREDO) Urban Charter School Study: Report on 41 Regions, <http://urbancharters.stanford.edu/summary.php>. Overall results are calculated by weighting city-level results by student enrollment in each sector.

We conclude that public charter schools in these eight U.S. cities are a good public investment in terms of the comparative amount of student achievement they produce for the funding they receive.

**Acknowledgements**

We thank Gary Larson, Jason Mandell and Molly O'Brien of Larson Communications for expert advice regarding the organization and clarity of this report. We are indebted to Albert Cheng for constructive comments on an early draft. We are grateful to Mario Crandall of Remedy Creative for graphic design and formatting enhancements. We thank the Walton Family Foundation for the support that made this work possible and acknowledge that the content of the report is entirely the responsibility of the research team and does not necessarily reflect the positions of the Foundation or the University of Arkansas.

## A Good Investment: The Updated Productivity of Public Charter Schools in Eight U.S. Cities

### Introduction

President Donald Trump called for a \$20 billion<sup>7</sup> reallocation of federal funds towards school choice programs during his 2016 campaign and promoted school choice during his 2019 State of the Union Address.<sup>8</sup> The President also appointed a strong supporter of school choice, Betsy DeVos, as U.S. Secretary of Education. Trump's Fiscal Year 2019 budget also called for \$500 million in federal funding for public charter schools.<sup>9</sup> Meanwhile, Democrats now control the U.S. House of Representatives and teachers have held strikes in places like West Virginia and Oakland in part to stop the launch or growth of public charter schools. These events have led to a robust discussion concerning the potential merits, and possible downsides, of school choice programs including charters.

Public charter schools are publicly supported schools freed from some of the daily regulations surrounding traditional public schools. In exchange for that greater level of autonomy, public charter schools are required to meet performance goals contained in their authorizing charter or face the prospect of closure. Most public charter schools may enroll students from a wide geographic area, not just a neighborhood school zone, but have to admit students by lottery if oversubscribed. Over 7,000 public charter

schools enrolled over 3 million students during the 2017-18 school year.<sup>10</sup>

School choice skeptics frequently claim that public charter schools perform no better than

Over 7,000 public charter schools enrolled over 3 million students during the 2017-18 school year.

traditional public schools (TPS) on standardized test scores.<sup>11</sup> Although a few individual studies of public charter schools have supported that claim,<sup>12</sup> the most comprehensive research reports conclude that, though results vary across states and charter school networks, on average public charter schools have a positive effect on student achievement.<sup>13</sup> Charter school performance appears to be especially strong in cities.<sup>14</sup> Moreover, none of the earlier studies of

The most comprehensive research reports conclude that...on average public charter schools have a positive effect on student achievement.

the relative effectiveness of public charter schools have explicitly considered the funding differences that exist across the two public school sectors. All of our research team's prior reports have found that students in public charter schools receive substantially fewer annual educational resources

All of our research team's prior reports have found that students in public charter schools receive substantially fewer annual educational resources than their TPS peers.

than their TPS peers.<sup>15</sup> Private philanthropy does not come close to compensating charters for the lack of equity in public funding because TPS receive it, too, and philanthropic dollars compose only 2.5 percent of total charter revenues nationally.<sup>16</sup>

Our team has produced two of the three prior studies of the productivity of public charter schools, accounting for both their effectiveness and funding relative to TPS. In our first public charter school productivity study, across our sample of 21 states plus the District of Columbia, we found that public charter schools generated 17 additional NAEP points in math and 16 additional points in reading per \$1,000 of funding compared to TPS.<sup>17</sup> We reported that the return-on-investment from a child spending half of his or her K-12 experience (6.5 years) in a public charter school was 19 percent higher than from a child being educated exclusively in TPS.

Our second public charter school productivity study was the first to examine if the advantages existed in various cities across the U.S.<sup>18</sup> After all, most public charter schools open in cities, specifically to serve highly disadvantaged students. We found that public charter schools outperformed TPS in each of the eight cities on our measures of cost-effectiveness and return-on-investment (ROI). On average across the cities, public charter schools were 31 to 32 percent more cost-effective and produced a 38 percent larger ROI than TPS. The public charter school cost-effectiveness advantage ranged from 2 percent in Houston to 68 percent in Washington,

Public charter schools received \$5,828 less per pupil than TPS, representing a funding inequity of 27 percent, on average.

D.C., while the public charter school ROI advantage ranged from 4 percent in Houston to 85 percent in the nation's

capital. The only other existing study to examine differences in productivity across education sectors found that public charter schools in Michigan were about 32 percent more cost-effective and produced a 36 percent higher ROI than TPS.<sup>19</sup>

In our most recent school revenue study, our research team found that funding inequities that handicap students in public charter schools have continued through the 2015-16 school year in 13 out of 14 metropolitan areas examined in the U.S.<sup>20</sup> Across the 14 locations, public charter schools received \$5,828 less per pupil than TPS, representing a funding inequity of 27 percent, on average.

In spite of the economic recovery, state and local governments remain concerned about their ability to finance

public education. It is vital to determine where scarce educational resources should be allocated to maximize student success. Our current study builds upon our most recent charter funding inequity report, and updates our most recent productivity study, by focusing on how taxpayer investments in the 2015-16 school year translate to student outcomes across the two public school systems. We are able to connect funding to student outcomes for a subset of eight of the 14 locations in our study: Atlanta, Boston, Denver, Houston, Indianapolis, New York City, San Antonio, and Washington, D.C.

We use two measures, cost-effectiveness and return-on-investment (ROI), to determine which public school sector is producing the biggest bang for the taxpayers' bucks for those eight cities using revenue data from the fiscal 2016 school year. Cost-effectiveness is measured by how many 2017<sup>21</sup> National Assessment of Educational Progress (NAEP) math and reading test score points each sector produced for each \$1,000 spent per student. ROI converts the learning gains experienced by public charter and TPS students to long-run economic benefits, measured by expected impacts on lifetime earnings, and compares those benefits to the total revenues invested in each student's K-12 education.

We find that public charter schools outperform TPS in each of the eight cities on both productivity measures. On average, for the students in our cities, public charter schools are

Cost-effectiveness is measured by how many 2017 National Assessment of Educational Progress (NAEP) math and reading test score points each sector produced for each \$1,000 spent per student.

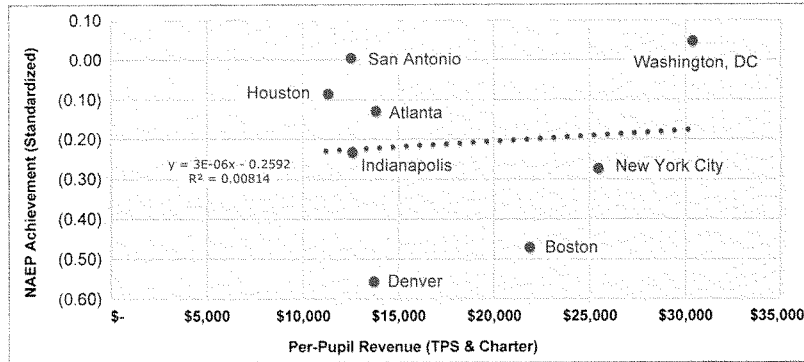
ROI converts the learning gains experienced by public charter and TPS students to long-run economic benefits.

On average, for the students in our cities, public charter schools are 40 percent more cost-effective and produce a 53 percent larger ROI than TPS.

40 percent more cost-effective and produce a 53 percent larger ROI than TPS. The charter cost-effectiveness advantage ranges from 5 percent in Houston to 96 percent in Atlanta, while the charter ROI advantage ranges from 7 percent in Houston to 102 percent in Atlanta.



Figure 1: Relationship between Revenue and Achievement by City in the Sample



### Background: Spending and Achievement in the Eight Cities

Scholars continue to debate the extent to which school resources affect student achievement.<sup>22</sup> The eight cities in our sample vary substantially in both their average per-pupil funding for public school students in both the public charter and TPS sectors combined and student performance on the NAEP in reading relative to the average performance in each city's state (figure 1). Washington, D.C. funds the most per public school pupil, an average of about \$30,000, and scores slightly above the state average on NAEP reading.<sup>23</sup> San Antonio, in contrast, funds its public school students at around \$12,000 and its students score about equal to the Texas state average in reading on the NAEP, a rare achievement for a U.S. city. Denver commits about 10 percent more revenue per TPS student than San Antonio, but its average student NAEP scores in reading are more than 55 percent below the

Colorado state average.

Although the relationship between per-pupil funding and student performance relative to state averages is statistically zero for these cities, large metropolitan areas like New York City may commit so much revenue to public education most likely because they have a student body that is more difficult to educate, leading to low student outcomes even with a high commitment of resources. Obviously, comparing differences in revenue and outcomes across cities is not a strong method for determining how educational resources actually affect student achievement. We present these simple correlations here merely to illustrate the spending and achievement backgrounds of our cities.

As an improvement upon the descriptive data illustrated above, we compare NAEP scores to per-pupil funding across public school sectors within the same city. This way we are able to control for cross-city differences in student backgrounds in our analyses.

We present two averages of the results across the cities in our sample. The first is the average of the cities, treating each city as a single, equally-weighted observation. The second, our preferred method, is a student-weighted average across the sample which gives greater weight to cities that have more students contributing to the calculation and less weight to cities that have fewer students contributing. The student-weighted calculations of cost-effectiveness and ROI are completed in two steps. First, we determine the student-weighted averages separately by public school sector, with cities that have relatively larger TPS sectors weighted more heavily in the TPS calculation and cities that have relatively larger public charter sectors weighted more heavily in the charter calculation. After the student-weighted average results are determined for each sector, the lower number (always the TPS number in our case) is subtracted from the higher number (always the public charter number in our case) to determine the weighted average of the charter productivity advantage (see the Methodology Appendix for details). This two-step process generates true student-weighted average productivity levels across our sample at both the sector and overall levels. If, instead, one weights each city's results by the combined K-12 student population for both TPS and charter, the productivity results change only slightly.

Our analysis addresses the question of levels of student disadvantage in the charter and TPS sectors in two ways. First, the evidence on student achievement differences between the two public school sectors in a given city used in the ROI analysis come from a 2015 Stanford University study in which students in the public charter and TPS sectors were matched on factors such as previous test scores and low-income, English language learner, and special education status.<sup>24</sup> Second, the evidence on revenue differences between charter and TPS in our cities comes from our previous revenue study in which we found that three of our cities – Denver, Houston, and New York City – enrolled higher or similar rates of low-income students in their charter sectors compared to their TPS sectors in 2016.<sup>25</sup> The other five cities – Atlanta, Boston, Indianapolis, San Antonio, and Washington, D.C. – enrolled a higher rate of low-income students in their TPS than their charter sectors but the differences were only large in the case of Atlanta. The TPS sectors more consistently enrolled higher percentages of students labeled as English learners or in special education, but those enrollment gaps failed to explain the revenue differences between the public school sectors in every city except Boston. Thus, different levels of student disadvantage across the public school sectors in these cities explain some but not all of the productivity advantage for public charter schools.

Thus, different levels of student disadvantage across the public school sectors in these cities explain some but not all of the productivity advantage for public charter schools.

## Cost-Effectiveness Using NAEP Achievement Scores

Cost-effectiveness is “the efficacy of a program in achieving given intervention outcomes in relation to the program costs.”<sup>26</sup> Our study measures the effectiveness of the school system to attain outcomes relative to the costs associated with improving children’s academic achievement throughout their 13-year K-12 educational experience. We use the nation’s report card – NAEP math and reading scores in 2017 – as the intervention outcome and the total per-pupil revenue allocated in fiscal year (FY) 2016 to students in the public charter and TPS sectors as the program cost.

Students in the 4<sup>th</sup>, 8<sup>th</sup>, and 12<sup>th</sup> grades take the NAEP exam. The 4<sup>th</sup> grade NAEP results likely understate all of the learning acquired throughout the K-12 educational experience, as students still have over 60 percent of their schooling remaining. The 12<sup>th</sup> grade NAEP results likely overstate overall learning levels because they do not include struggling students who dropped out prior to 12<sup>th</sup> grade. As a result, we use 8<sup>th</sup> grade NAEP math and reading test scores for our outcome in this analysis. The results are similar if 4<sup>th</sup> grade NAEP scores are used in place of 8<sup>th</sup> grade scores, and 12<sup>th</sup> grade NAEP scores are not available at the individual city level. Although it would be interesting to compare the

cost-effectiveness of the public charter and TPS sectors specifically for low-income students, such subgroup NAEP data are not available at the city level.

Math and reading scores are not the only outcomes produced by educational institutions. However, public schools explicitly focus on standardized tests, especially since math and reading test scores were public school accountability measures mandated by the federal government during the period of this study. Further, math and reading test scores at the very least serve as a proxy measure for the overall quality of an educational experience.

See the sidebar for an example computation of cost-effectiveness for New York City. After considering the per-pupil funding differences across the two sectors, New York City public charter schools produced an average of 2.21 more points on the NAEP reading assessment and 2.57 more points on the NAEP math exam for each \$1,000 in funding than TPS in New York City. This difference illustrates a 25 to 26 percent public charter school advantage over TPS in cost-effectiveness in producing reading and math scores.

**Overall Cost-Effectiveness Results**

Now we consider the results across all eight of our cities. The average public charter school sector in our sample produced 19.63 NAEP reading points per \$1,000 funded compared to 14.43 points in the average TPS sector (table 1). This 5.20 NAEP reading score difference represents a 36 percent public charter school sector advantage over TPS in cost-effectiveness. Accounting for the different sizes of the K-12 populations in the public charter and TPS sectors of the eight cities, the student-weighted average production of the public charter sector was 16.74 NAEP reading points per \$1,000 compared to 11.94 for TPS. The student-weighted public charter school advantage of 4.80 reading points per \$1,000 represents a cost-effectiveness benefit of 40 percent.

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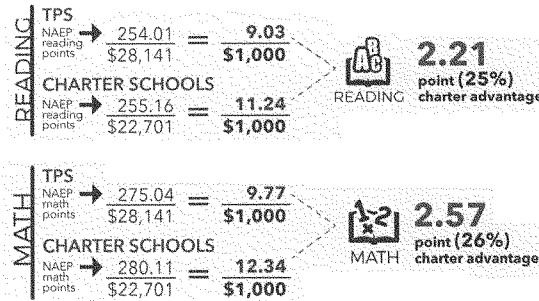
**Example Computation: New York City**

Our cost-effectiveness metric is a benefit-cost ratio of NAEP math and reading achievement to average per-pupil revenues allocated for each sector. This calculation can be expressed as:

$$\text{Cost-Effectiveness} = \frac{\text{Achievement Scores}}{\text{Per-Pupil Revenue}}$$

In New York City traditional public schools, average NAEP scores were 254 for reading and 275 for math, and per-pupil revenue was \$28,141. In New York City public charter schools, average NAEP scores were 255 points for reading and 280 for math, and per-pupil revenue was \$22,701. Notably, even if funding levels were equal across the two public school sectors, public charter schools in New York City would be more cost-effective than TPS in 2016, as they produced higher math and reading test scores.

The cost-effectiveness calculations for New York City are the following:



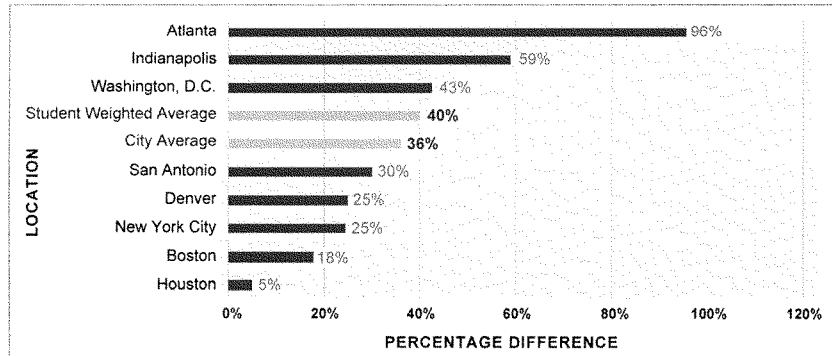
**Table 1: NAEP Reading Achievement Levels per Thousand Dollars Funded**

Location	Traditional Public Schools			Public Charter Schools			Difference NAEP Points per \$1,000 Funded
	NAEP Score	Per Pupil Revenue	NAEP Points per \$1,000 Funded	NAEP Score	Per Pupil Revenue	NAEP Points per \$1,000 Funded	
Atlanta	261.26	\$18,276	14.30	262.34	\$9,382	27.96	13.67
Indianapolis	262.54	\$15,380	17.07	265.23	\$9,769	27.15	10.08
San Antonio	260.03	\$14,147	18.38	261.15	\$10,934	23.88	5.50
Denver	250.21	\$15,230	16.43	251.47	\$12,248	20.53	4.10
Washington, D.C.	246.86	\$35,494	6.95	250.25	\$25,236	9.92	2.96
New York City	254.01	\$28,141	9.03	255.16	\$22,701	11.24	2.21
Boston	257.24	\$23,288	11.05	265.50	\$20,423	13.00	1.95
Houston	257.09	\$11,557	22.25	257.72	\$11,040	23.34	1.10
CITY AVERAGE	256.15	\$20,189	14.43	258.60	\$15,217	19.63	5.20
STUDENT-WEIGHTED AVERAGE	254.74	\$24,143	11.94	256.66	\$17,936	16.74	4.80

Note: Revenue data pertain to the 2016 Fiscal Year, which aligns with the 2015-2016 Academic Year, and are adapted from *Charter School Funding: (More) Inequity in the City*, by DeAngelis et al., 2018, <http://www.uaedreform.org/charter-school-funding-more-inequity-in-the-city/>. NAEP reading achievement data are from 2017 and are adapted from <http://nces.ed.gov/nationsreportcard/naepdata/dataset.aspx>.

These cost-effectiveness results differ across the eight cities. The charter school cost-effectiveness advantage ranges from 5 percent in Houston to 96 percent in Atlanta (figure 2). Seven of the eight cities have public charter school cost-effectiveness advantages exceeding 15 percent and six of these are above 20 percent. Three locations, Washington, D.C.; Indianapolis; and Atlanta; have public charter school cost-effectiveness advantages above 40 percent.

**Figure 2: Reading Cost-Effectiveness Advantage for Public Charter Schools in Percentage Terms, by City**



The charter school cost-effectiveness advantage ranges from 5 percent in Houston to 96 percent in Atlanta.

The charter school advantage is nearly identical for NAEP math scores. On average, per \$1,000 funded, the public charter school sectors in our study produce 21.06 NAEP math points compared to 15.51 points for the TPS sectors (table 2). This 5.55 point math difference is equivalent to a 36 percent cost-effectiveness advantage for public charter schools. The student-weighted average production of the public charter sector is 18.06 NAEP math points per \$1,000 compared to 12.93 for TPS. The student-weighted public charter school advantage of 5.13 math points per \$1,000 represents a cost-effectiveness benefit of 40 percent.

The public charter school advantage in math cost-effectiveness is 20 percent or larger in all but two locations: Boston and Houston (figure 3). Again, the gaps are the largest in D.C., Indianapolis, and Atlanta, where the charter school cost-effectiveness advantage exceeds 42 percent in each location. Boston, Denver, New York City, and San Antonio all have charter schools producing around 20 to 30 percent higher math test scores for each \$1,000 funded.

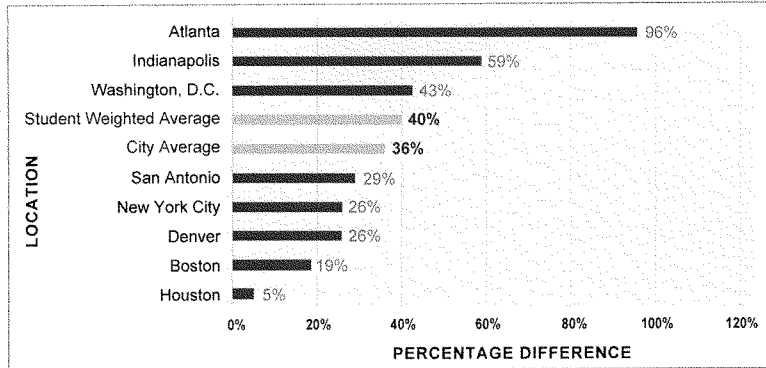
**Table 2: NAEP Math Achievement Levels per Thousand Dollars Funded**

Location	Traditional Public Schools			Public Charter Schools			Difference NAEP Points per \$1,000 Funded
	NAEP Score	Per Pupil Revenue	NAEP Points per \$1,000 Funded	NAEP Score	Per Pupil Revenue	NAEP Points per \$1,000 Funded	
Atlanta	274.67	\$18,276	15.03	275.30	\$9,382	29.34	14.31
Indianapolis	278.43	\$15,380	18.10	280.74	\$9,769	28.74	10.63
San Antonio	280.19	\$14,147	19.81	279.14	\$10,934	25.53	5.72
Denver	267.49	\$15,230	17.56	270.18	\$12,248	22.06	4.50
Washington, D.C.	265.85	\$35,494	7.49	270.54	\$25,236	10.72	3.23
New York City	275.04	\$28,141	9.77	280.11	\$22,701	12.34	2.57
Boston	279.61	\$23,288	12.01	290.95	\$20,423	14.25	2.24
Houston	280.64	\$11,557	24.28	281.45	\$11,040	25.49	1.21
AVERAGE	275.24	\$20,189	15.51	278.55	\$15,217	21.06	5.55
STUDENT-WEIGHTED AVERAGE	275.57	\$24,143	12.93	278.16	\$17,936	18.06	5.13

Note: Revenue data pertain to the 2016 Fiscal Year, which aligns with the 2015-2016 Academic Year, and are adapted from *Charter School Funding: (More) Inequity in the City*, by DeAngelis et al., 2018, <http://www.uaedreform.org/charter-school-funding-more-inequity-in-the-city/>. NAEP math achievement data are from 2017 and are adapted from <http://nces.ed.gov/nationsreportcard/naepdata/dataset.aspx>.

The student-weighted public charter school advantage of 5.13 math points per \$1,000 represents a cost-effectiveness benefit of 40 percent.

Figure 3: Math Cost-Effectiveness Advantage for Public Charter Schools, by City



**Calculating ROI in Terms of Economic Returns to Education**

Return-on-investment (ROI) is:

*A performance measure used to evaluate the efficiency of an investment or to compare the efficiency of a number of different investments. ROI measures the amount of return on an investment relative to the investment's cost. To calculate ROI, the benefit (or return) of an investment is divided by the cost of the investment, and the result is expressed as a percentage or a ratio.<sup>27</sup>*

In our case, the ROI is the average impact each sector has on student learning gains, and the

cost of the investment is the total per-pupil revenue allocated over 13 years of schooling for each sector. To monetize this measure, we convert the average learning gains produced by each public school sector to the economic return of lifetime earnings. This ROI is essentially a benefit-cost ratio, calculated as:

$$ROI = \frac{\text{Income Returns to Investment}}{\text{Cost of Investment}}$$

The cost of investment is a straightforward calculation that captures the per-pupil revenue invested in a child's K-12 educational experience over 13 years. This figure can easily be calculated by multiplying the average FY 2016 per-pupil revenue for each sector by 13.

The income return to investment is the net present value of additional lifetime earnings accrued through higher cognitive ability as measured by test scores. Average learning gains for the charter and TPS sectors in each of the eight cities come from the CREDO *Urban Charter School Study*. CREDO researchers carefully matched students in the public charter sector with “virtual twins” in the TPS sector on previous test scores and low-income, English language learner, and special education status.<sup>28</sup> Stanford University economist Eric Hanushek has estimated that a one standard deviation increase in cognitive ability leads to a 13 percent increase in lifetime earnings.<sup>29</sup> Only 70 percent of gains in learning persist each year. If we multiply these two estimates together, we find the learning gains relative to the average worker in the state. By comparing the learning gains relative to the average worker in the state, we estimate the returns to the schooling investment in terms of yearly income while accounting for contextual features of the local markets.<sup>30</sup> We use 2017 data from the United States Bureau of Labor Statistics to find state-level average annual earnings and assume that current students will work for 46 years between the ages of 25 and 70.<sup>31</sup> When calculating the net present value of lifetime earnings, we assume a one percent yearly growth in average salaries and a three percent annual discount rate.<sup>32</sup>

The calculation can be expressed by the following formula:

$$\text{Lifetime Earnings in Sector} = \text{Lifetime Earnings in State} * [1 + (\text{Sector SD}) * (0.13/\text{SD}) * (0.70)]^{13}$$

### Overall ROI Results

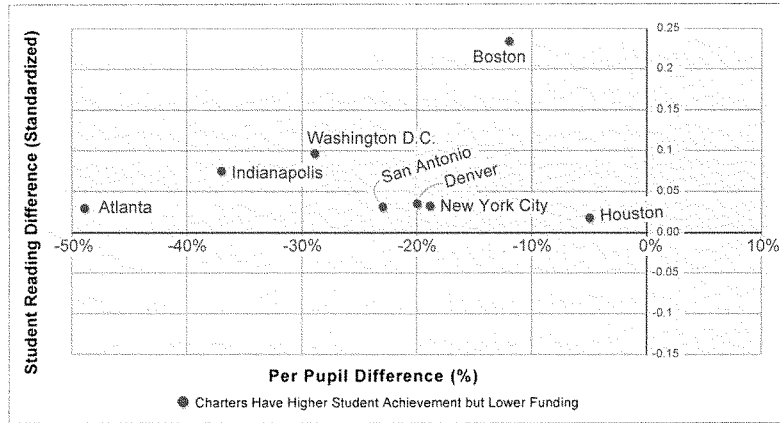
Our return on investment calculations for each city can be located in a graph with four quadrants, depending on whether or not student achievement is higher for public charter schools or TPS and whether or not student funding is higher for charters or TPS (figure 4). In practice, the top left quadrant of the graph is all that matters to us, since all eight cities contain public charter school sectors with higher student achievement gains and lower funding than their TPS counterparts. In other words, public charter schools in these cities are outperforming their local TPS despite receiving less funding per student. Boston charter schools demonstrate the highest advantage among the cities in student achievement gains compared to their TPS counterparts, an increase of 24 percent of

All eight cities contain public charter school sectors with higher student achievement gains and lower funding than their TPS counterparts.

a standard deviation. Atlanta reveals the largest funding gap among the eight cities, as their public charter schools are funded almost 50 percent below the funding rate for their local TPS.



Figure 4: Charter School Funding and Performance



Note: Revenue data pertain to the 2016 Fiscal Year, which aligns with the 2015-2016 Academic Year, and are adapted from *Charter School Funding: (More) Inequity in the City*, by DeAngelis et al., 2018, <http://www.uaedreform.org/charter-school-funding-more-inequity-in-the-city/>. Achievement data are standardized relative to the state overall and cover 2006-07 to 2011-12 and are provided by the Center for Research on Education Outcomes (CREDO) *Urban Charter School Study: Report on 41 Regions*, <http://urbancharters.stanford.edu/summary.php>.

The public charter school ROI benefit is even larger than the cost-effectiveness advantage of charters. On average across the cities, each dollar invested in a child’s K-12 schooling results in \$6.37 in lifetime earnings in public charter schools compared to \$4.41 in lifetime earnings in TPS, a higher return of \$1.96 per dollar in the charter versus TPS sectors. As revealed in table 3 and figure 5, averaged across the eight cities, a 13-year investment in public charters yields ROIs that are 45 percent higher than a TPS investment. The student-weighted average charter school advantage in ROI is \$1.99 or 53 percent. The charter school ROI advantage exceeds 25 percent in seven locations, ranging from 7 percent in

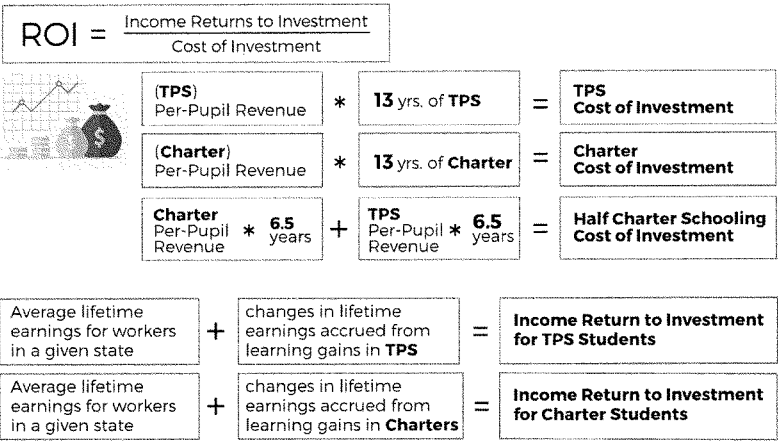
Houston to 102 percent in Atlanta. Notably, public charter school ROI advantages exceed 50 percent in Boston, Indianapolis, Atlanta, and Washington, D.C.

Moreover, an investment in students spending half of their time in each sector yields an overall ROI benefit of \$5.19 for each invested dollar, an 18 percent advantage relative to a full-time (13 year) K-12 experience in TPS or 27 percent if student-weighted.<sup>39</sup> As shown in the last column of table 3, and figure 6, these benefits in higher ROI from charter schooling range from 3 percent in Houston to 35 percent in Atlanta.

On average across the cities, each dollar invested in a child's K-12 schooling results in \$6.37 in lifetime earnings in public charter schools compared to \$4.41 in lifetime earnings in TPS, a higher return of \$1.96 per dollar in the charter versus TPS sectors.

**Calculating Relative ROI Using the Economic Returns to Education**

Again, the ROI for each city and sector can be calculated as:



**Example Computation: New York City**

We again turn to New York City for an example of how we computed the charter school ROI compared to the TPS ROI. The per-pupil revenue is \$28,141 in TPS and \$22,701 for public charter schools, so a 13 year investment would equal \$365,833 in TPS and \$295,113 in charters. The average lifetime earnings for a worker in the state of New York is \$1,495,484. Since the expected New York City TPS achievement effects are 29 percent of a standard deviation less than the New York state average, and 70 percent of learning impacts disappear from one year to the next, the expected lifetime earnings for a student spending 13 years in a TPS in New York City is \$1,056,300. Dividing this benefit by the cost of investment yields an ROI of \$2.89 for each dollar invested in TPS in New York City. Since the expected New York City public

charter school achievement effects are 25.7 percent of a standard deviation lower than the New York state average, the expected lifetime earnings for a student attending a public charter school for 13 years in New York City is \$1,099,447. Dividing this benefit by the cost of investment yields an ROI of \$3.73 for each dollar invested in public charters in New York City. The charter school ROI of \$3.73 compared to the TPS ROI of \$2.89 yields a 29 percent ROI advantage favoring public charter schools in New York City.

Further, if a student in New York City experiences half of their K-12 education (6.5 years) in TPS and the other half in public charters, the taxpayer ROI is \$3.26, still around 13 percent higher than the ROI for a full 13-year K-12 educational investment in TPS.

**ROI = Income Returns to Investment / Cost of Investment**

**Cost of Investment** = Per-Pupil Revenue (TPS) \* 13 years

**In TPS Full Time:**  $\$28,141 \cdot 13 \text{ years} = \mathbf{\$365,833}$

Lifetime earnings amount: $\$1,495,484 \cdot [1 - (0.290 \text{ SD}) \cdot (0.13/\text{SD}) \cdot (0.70)]^{13} = \mathbf{\$1,056,300}$	<b>ROI for TPS:</b> $\$1,056,300 / \$365,833 = \mathbf{\$2.89}$
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**In Charter Full Time:**  $\$22,701 \cdot 13 \text{ years} = \mathbf{\$295,113}$

Lifetime earnings amount: $\$1,495,484 \cdot [1 - (0.257 \text{ SD}) \cdot (0.13/\text{SD}) \cdot (0.70)]^{13} = \mathbf{\$1,099,447}$	<b>ROI for Charter:</b> $\$1,099,447 / \$295,113 = \mathbf{\$3.73}$
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**In Charter Half Time:**  $(\$28,141 \cdot 6.5 \text{ years}) + (\$22,701 \cdot 6.5 \text{ years}) = \mathbf{\$330,473}$

Lifetime earnings amount: $\$1,495,484 \cdot [1 - (0.290 \text{ SD}) \cdot (0.13/\text{SD}) \cdot (0.70)]^{6.5} +$ $\$1,495,484 \cdot [1 - (0.257 \text{ SD}) \cdot (0.13/\text{SD}) \cdot (0.70)]^{6.5} = \mathbf{\$1,077,658}$	<b>ROI for Half in Each:</b> $\$1,077,658 / \$330,473 = \mathbf{\$3.26}$
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**Table 3: ROI Comparisons between Charter and Traditional Public Schools in the Cities**

Location	Charter 13 Years		Charter 6.5 Years	
	ROI Difference (Charter - TPS)	ROI Difference (Percent)	ROI Difference (Charter - TPS)	ROI Difference (Percent)
Atlanta	\$4.25	102	-\$1.44	35
Indianapolis	\$2.88	73	-\$1.11	28
Washington, D.C.	\$2.67	58	-\$1.10	24
Boston	\$1.32	53	-\$0.58	23
San Antonio	\$2.24	34	-\$0.98	15
Denver	\$1.02	30	-\$0.45	13
New York City	\$0.84	29	-\$0.37	13
Houston	-\$0.50	7	-\$0.24	3
<b>CITY AVERAGE</b>	<b>-\$1.96</b>	<b>45</b>	<b>-\$0.79</b>	<b>18</b>
<b>STUDENT-WEIGHTED AVERAGE</b>	<b>\$1.99</b>	<b>53</b>	<b>-\$1.01</b>	<b>27</b>

**Figure 5: ROI for Charter Schools Relative to TPS (13 Years in Charter)**

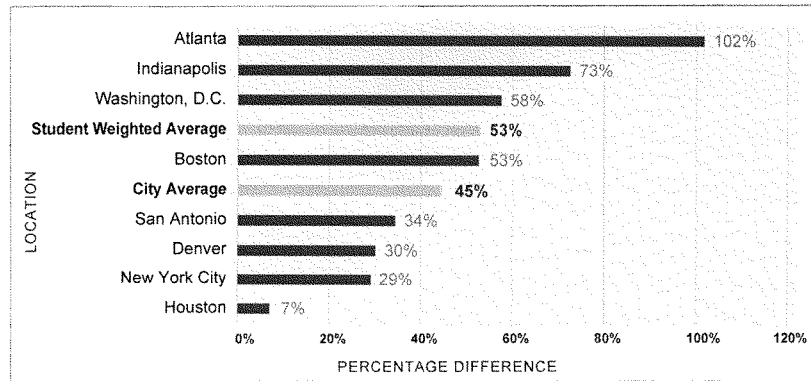
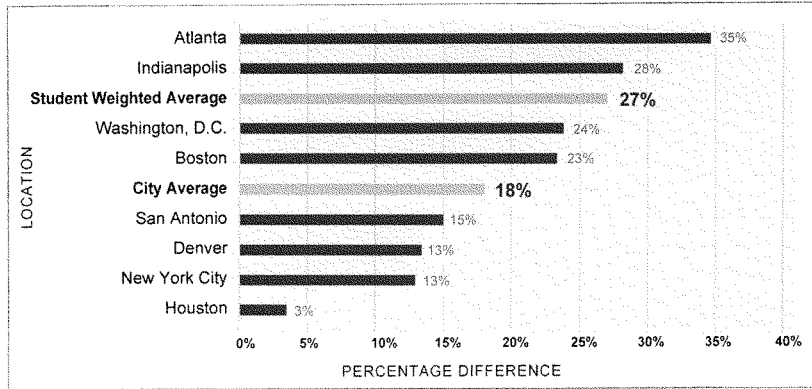


Figure 6: ROI for Charter Schools Relative to TPS (6.5 Years in Charter)



## Conclusion and Policy Implications

This report further supports the existing evidence that public charter schools are a good public investment. Our evidence indicates that charter schools, on average, yield a more efficient allocation of educational resources than does the traditional way of delivering public education through geographically defined district schools. Since educational resources are limited, charter schools look to be an especially attractive vehicle for delivering education to students more productively.

Our study has limitations. It is merely descriptive, presenting the relationships between school revenue and student outcomes as they were observed. However, the cost-effectiveness and ROI analyses are rigorous, as they both use CREDO results based on a quasi-experimental methodology that eliminates many observable differences in student background characteristics across the public charter and TPS sectors. In addition, our productivity results are similar, both indicating large public charter school advantages, whether estimating cost-effectiveness or ROI.

Our evidence indicates that charter schools, on average, yield a more efficient allocation of educational resources than does the traditional way of delivering public education through geographically defined district schools.

The results for Atlanta are exceptional. A virtual school in Atlanta was chartered and greatly expanded from 2014 through 2016.<sup>34</sup> Virtual charter schools are funded at 38% of the per-pupil total of brick-and-mortar charter schools in Georgia. As a result, the funding gap between public charter and TPS in Atlanta was especially large in fiscal year 2016. Since the funding gap is a major element of the productivity calculations, it partially explains why Atlanta public charter schools demonstrated the largest cost-effectiveness and ROI advantages relative to their TPS of the eight cities in our sample.

The results in Houston also require some further explanation. Houston public charter schools had the smallest advantage in productivity relative to their TPS among the eight charter sectors in our study. That does not mean, however, that Houston charters are laggards in either performance or productivity. The public charter school sector in Houston was fourth highest among the urban charter sectors in cost-effectiveness for both reading and math, exceeded only by the charter sectors in Indianapolis, Atlanta, and San Antonio. The traditional public school sector in Houston, however, was the most productive TPS in our study. Thus, the small size of the productivity advantage of Houston charters relative to Houston TPS is largely due to both public school sectors in Houston being highly and almost equally productive.

Our findings only pertain to the eight cities included in our analyses. Those cities, however, represent the diversity of American urban areas with public charter school sectors. Our sample includes both the largest city in the U.S., New York, and a relatively small one, Atlanta. It includes cities in the north (Boston & Indianapolis), south (Atlanta, Houston & San Antonio), east (Boston & Washington, D.C.), and west (Denver). The public charter school sectors in all eight of these U.S. cities are more cost-effective and deliver a higher return-on-investment than their respective traditional public school sectors. In these important urban environments, there is a clear productivity advantage for public charter schools.

Thus, the small size of the productivity advantage of Houston charters relative to Houston TPS is largely due to both public school sectors in Houston being highly and almost equally productive.

In these important urban environments, there is a clear productivity advantage for public charter schools.

## Appendix A Methodology for Revenue Data that Informed the Study

### Location Selection

The team selected 15 metropolitan areas for the revenue analysis that contributed to this return on investment (ROI) study,<sup>35</sup> based on one of two criteria: the concentration of charter schools within an area or the potential for charter school growth there. Locations represent selected cities or counties used as an analysis domain for aggregating district data and geographically and demographically similar charter school data for comparative purposes. The objective of our location selection is to match district students with charter students by educational setting and student need. Locations are used as a proxy for urban/metropolitan settings. They can include a single district or multiple districts, and include geographically related multiple charter schools. The revenue study provided district and charter

revenue totals and funding disparity amounts for each location. As shown in the table below, our productivity analysis was limited to eight locations because NAEP scores were not available for six locations and one location was an outlier.

### Fiscal Year

We gathered publicly available revenue data for the 2015-16 *fiscal year* (FY16). Because states differ in the fiscal year used for their public schools, we attempted to select the fiscal year that most closely matched the 2015-16 school year. We refer to that year throughout this report as “FY 2016.”

### Data Gathering

Source records were acquired directly from official state department of education records, and from independently audited financial statements when a state does not collect financial data. For New York City, we used detailed expenditure data from the New York City Education Department due to the greater level of detail available. We used the most reliable, most detailed, official records available in all cases. The same data and analysis standards for the four previous revenue studies were applied for each location in the study, except we now use the district detail file to track revenues in New

**Table A1: Cities Included in and Excluded from the Productivity Analyses**

City	Included in NAEP ROI Analysis	Reason for Exclusion from Analysis
Houston	Yes	
Atlanta	Yes	
Boston	Yes	
New York City	Yes	
San Antonio	Yes	
Denver	Yes	
Indianapolis	Yes	
Washington, D.C.	Yes	
Tulsa	No	NAEP Achievement Data Not Available
Little Rock	No	NAEP Achievement Data Not Available
Shelby	No	NAEP Achievement Data Not Available
Los Angeles	No	NAEP Achievement Data Not Available
Oakland	No	NAEP Achievement Data Not Available
Camden	No	NAEP Achievement Data Not Available
New Orleans	No	Outlier

York City and include the value of in-kind services districts provided to charters starting in 2014.<sup>35</sup>

Revenues and expenditures were collected from many sources, from state and federal agencies where these data are kept, as well as from audits. After the FY16 school year concluded, the team waited 18 months to begin researching this project in order to allow state departments of education and charter schools time to produce and submit all of their official financial records, Annual Financial Reports, independent audits, enrollment statistics, and other data. The methodology matches a state's Department of Education's (DOE) records of school district revenues to the same fiscal year of data drawn from independent audits for the charter schools. Because all data analyzed for districts and charter schools are as of the same date, FY16, all data are properly matched based on the reporting time period.

The analytic team did not rely upon finance data or demographic data collected by federal agencies, except in very rare cases where the data are not available from state and local sources. Data sourced from federal agencies have gone through extensive aggregation and reporting processes that tend to be aggregated to the point where there is insufficient specificity to be useful for our analysis, and where we have seen reporting errors when checked against original state sources.

New Orleans is excluded from our recent set of reports, including this productivity analysis. State funding and accounting for charter schools since Hurricane Katrina has been unusual in the Crescent City and not representative of patterns or practices in other places.

### **Data from Various Unique State Sources, Analyzed into Comparative Datasets**

In each state that was home to one of the metropolitan areas in our analysis, we encountered a maze of web sites, reports, audits, and other information that, while extremely challenging to piece together, ultimately provided the best sources of primary data for understanding and analysis of funding levels and comparisons. By using each state's individual accounting system, we were able to isolate revenue streams for inclusion or exclusion to accommodate our consistent methodology and to make valid comparisons across school sectors and locations.

We began our research on state web sites, searching for financial data reported by local, state, federal, and other revenue categories. Though many states provided some form of revenue data, often the data existed only for school districts (not charters), or the data did not conform to the classifications used in other states. In those cases, we used additional data sources to develop conforming revenue figures. In instances where the state did not collect charter school revenue data, we used independent audits of financial data and sometimes federal Form 990.

We gathered enrollment data from state education department web sites. We also obtained funding formula guidelines for both districts and charters for FY 2015-16.

### **Analysis of Revenues, Inclusions and Exclusions, Demographic Context**

Productivity calculations, such as these, are informed by the revenues received by organizations, not by their expenditures. Our mission was to examine how charter schools were treated in state public finance systems, so we focused on how much money schools received as a social investment. We looked for the following



data and supporting detail:

- **Revenues:** We included all revenues received by districts and public charter schools. Our goal was to determine the total amount of revenue received to run all facets of a school system, regardless of source. This analysis includes revenues and enrollments related to Adult Education and Pre-K. Also included are charter school contributions for the purpose of building schools (or other capital items), and similarly charter (if any) and district bond and loan proceeds for the purpose of building schools, excluding proceeds resulting from restructuring of debt. For charter schools, we included one-time revenues associated with starting the school, such as the federal Public Charter School Program and, in some cases, state and private grants. Fund transfers were not considered revenue items, and were not included in the analysis.

Arguably, one-time revenues could have been excluded since they are not part of a charter school's recurring revenues. However, they are a notable part of the funding story for the charter sector; when considering how much money is provided to run charter schools, these revenues cannot be and were not ignored. Furthermore, we also included onetime grants of various kinds to districts.

Funds initially received by traditional public schools that were passed along to charters usually were flagged as pass-through funds in the documentation we used to determine charter school revenue. In some cases we were able to identify additional cases of TPS providing services to charter students, usually involving special education, by examining expenditure data. In all cases where we were able to determine that traditional public school (TPS) funds either passed through to charters or were spent on charter school

students, we counted that as charter school revenue and not TPS revenue. For example, the New York City school district made \$246 million in in-kind expenditures supporting the charter schools in the city in FY16. We reduced the district's revenue by \$246 million and increased the charter sector total by the same amount, as that revenue supported charter students. Additionally, we adjusted revenues downward for districts and upward for charters in cases where the district provides classroom space to charter schools.

- **Enrollment:** Where multiple forms of enrollment data were available, we used the figures related to the official fall count day. Depending on a state's particular method of reporting enrollment, the official count could be either Average Daily Attendance (ADA) or Average Daily Membership (ADM).
- **Exclusion of Revenue:** The only revenue item we excluded from our analysis was funds resulting from the restructuring of debt, as those are not "new revenues" but merely a repackaging of existing assets and obligations.
- **Selection of Schools:** All charter schools in each locality were included in this study with the exception of schools for which we could not obtain valid revenue and enrollment data. If we could not obtain revenue data, the enrollments for those schools were excluded from the analysis. If we could not obtain enrollment data, the revenues for that school were excluded from the analysis.

### Rounding

Dollar values were rounded to the nearest dollar for each item. Percentages were rounded to the nearest whole number, which may cause apparent differences by a percentage.

### Tables and Charts

If no citation accompanies a table or chart, the information therein was compiled by the research team according to the process outlined above. When we relied on the data or publications of other organizations, we provided the relevant citation.

### Weighted Average Calculations

The totals presented in each table are weighted averages based on enrollments in the public

school sectors of each city. We generated them by taking the total student enrollment in a specific city for the 2016 Fiscal Year (2015-16 Academic Year) in their TPS sector and dividing it by the total student enrollment in all eight cities in their TPS that year. We did the same for their public charter school sectors. To generate the student-weighted average differences we multiply each city's TPS cost-effectiveness or ROI by its percent of the total enrollment for TPS in our collection of cities (table A2), take the average of those eight numbers, do the same for the charter sector,

and subtract the TPS student-weighted average from the charter student-weighted average. This straightforward method automatically generates a student-weighted average that is a "true" mean for the aggregated set of cities, given their different enrollments across the cities and between the public school sectors.

**Table A2: Percent of Students from Study Locations, FY16**

Location	State	Students (TPS)	Percent of Total (TPS)	Students (Charters)	Percent of Total (Charter)
Atlanta	GA	43,693	2.91%	24,326	9.95%
Boston	MA	53,530	3.57%	12,297	5.03%
Denver	CO	74,715	4.98%	17,462	7.14%
Houston	TX	215,627	14.38%	34,384	14.06%
Indianapolis	IN	29,583	1.97%	18,712	7.65%
New York City	NY	980,197	65.39%	91,415	37.38%
San Antonio	TX	53,069	3.54%	7,276	2.98%
Washington, D.C.	DC	48,690	3.25%	38,654	15.81%
<b>TOTALS</b>		<b>1,499,104</b>	<b>100.00%</b>	<b>244,526</b>	<b>100.00%</b>

## Appendix B

### Revenue Information Sources

#### Colorado (Denver)

- Colorado Department of Education, the School Finance Unit

#### District of Columbia

- District of Columbia Public Charter School Board
- District of Columbia Department of Revenue

#### Georgia (Atlanta)

- Georgia Department of Education, Office of Finance and Business Operations and Charter Schools Office
- Georgia Charter Schools Association
- Fulton County Schools Finance and Business
- Atlanta Public Schools Financial Services and Charter Schools Office

#### Indiana (Indianapolis)

- Indiana Department of Education, School Finance

#### Massachusetts (Boston)

- Massachusetts Department of Elementary and Secondary Education, School Finance
- Massachusetts Department of Elementary and Secondary Education, Charter Schools Office

#### NCES

- Massachusetts Department of Revenue, Division of Local Services

#### New York (New York City)

- New York City Department of Education
- New York State Education Department
- Audited Annual Financial Reports from school districts

#### Texas (Houston, San Antonio)

- Texas Education Agency, Division of School Finance, Information Analysis Division, and Division of Charter Schools
- Texas Resource Center for Charter Schools
- Houston Independent School District
- Dallas Independent School District

## Research Team



**Corey A. DeAngelis, Ph.D.**

Dr. DeAngelis is an education policy analyst at the Cato Institute's Center for Educational Freedom. His research primarily focuses on the effects of school choice programs on non-academic outcomes such as criminal activity, character skills, mental health, political participation, and schooling supply. He has authored or co-authored over 40 journal articles, book chapters, and reports on education policy. He received his Ph.D. in education policy from the University of Arkansas and additionally holds a Bachelor of Business Administration and a Master of Arts in Economics from the University of Texas at San Antonio.



**Patrick J. Wolf, Ph.D.**

Dr. Wolf is a Distinguished Professor of Education Policy and 21st Century Endowed Chair in School Choice at the University of Arkansas in Fayetteville. He has authored, co-authored or co-edited five books and over 150 journal articles, book chapters, and policy reports on school choice, civic values, public management, special education, and campaign finance. He received his Ph.D. in Political Science from Harvard University in 1995.



**Larry D. Maloney**

Mr. Maloney is president of Aspire Consulting and has investigated expenditure patterns of the nation's public schools on behalf of states and individual school districts since 1992. Mr. Maloney participated in the research team for the Fordham Institute revenue study in 2005, the Ball State University revenue study in 2010, and the University of Arkansas study in 2014. Recent projects include evaluations of revenues and expenditure patterns of eleven major metropolitan school districts and the charter schools located within their boundaries. Mr. Maloney co-authored a series of reports for the Fordham Institute on future retirement costs for three school districts, as well as conducted a school-by-school expenditure analysis for the Washington, D.C. region. He served as the evaluator for a U.S. Department of Education program designed to enhance the level of products and services provided by state charter associations. Additionally, he provided the financial analysis for the U.S. Government Accountability Office study of Title 1 expenditures and the U.S. Department of Education National Charter School Finance Study.



**Jay F. May**

Mr. May is founder of, and senior consultant for, EduAnalytics, LLC, a consulting practice focused on hands-on data-based initiatives to improve student performance. Mr. May's client work includes developing technology infrastructure for various aspects of student performance management - student information systems, instructional data management systems, assessment results delivery and analysis frameworks. Mr. May, a CPA, has expertise in K-12 education finances and provides research, consulting, and analysis for various aspects of funding equity and allocation. He is a co-inventor of In\$ite® - the Finance Analysis Model for Education® - a patented software tool for school-level and district-level expenditure analysis.

## Endnotes

- 1 National Center for Education Statistics, [Table 236.10](#).
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[Additional submissions by Ms. Fudge follow:]

Fudge Submission (Devos Hearing 2019)

[http://www.fldoe.org/core/fileparse.php/5606/urll/FTC\\_FinalReport-14-15.pdf](http://www.fldoe.org/core/fileparse.php/5606/urll/FTC_FinalReport-14-15.pdf)

**Evaluation of the Alabama Accountability Act:  
Academic Achievement Test Outcomes of  
Scholarship Recipients 2016 - 2017**

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## Executive Summary

This report fulfills the evaluation requirements of the 2013 Alabama Accountability Act by reporting on the academic achievement of the 2016-2017 scholarship recipients.

### **The report focuses on three objectives:**

1. Describe the academic achievement of students in the scholarship program.
2. Compare scholarship recipients to Alabama public school students.
3. Assess changes in achievement across time.

Scholarship Granting Organizations provided demographic information and achievement test scores for scholarship recipients. Achievement test score information for Alabama public school students was retrieved from the State Department of Education website.

### **Some challenges were encountered in conducting the evaluation:**

- The lack of a uniform achievement test among schools constrained the description of the achievement of scholarship recipients and the comparisons that could be made to Alabama public school students.
  - Norm-referenced tests (e.g., the Stanford Achievement Test) and criterion-referenced tests (e.g., ACT Aspire) are based on different standards and cannot be directly compared.
  - Some achievement tests were used by only one school or included only a small number of students, making analyses unreliable.
- The test score information available from the Alabama State Department of Education only includes the percentage of students in proficiency groups based on ACT Aspire and ACT College Entrance Exam scores, which limited the types of analyses that could be conducted.
- Inconsistencies in test score reporting from schools and missing test data limited the number of students who could be included in the evaluation sample.

**The evaluation was based upon test scores from 1,991 scholarship recipients attending 114 schools in 43 counties. This represented 76% of the scholarship recipients in the grades for which testing was required. These students varied in their demographic characteristics:**

- Number of years receiving a scholarship:
  - 15% were first time scholarship recipients.
  - 11% were two-time scholarship recipients.
  - 51% were three-time recipients.
  - 22% were in their fourth year.
- 90% were eligible for free/reduced lunch subsidies.
- 34% were zoned to attend a failing school.
- 62% were Black/African American, 20% were White/Caucasian, and 11% were Hispanic.

*Continues*

*Executive Summary Continued*

Although this report can show trends for this subsample of scholarship recipients, due to the necessity of excluding a significant proportion of scholarship recipients (24%) from analyses, findings may not be representative of all of the scholarship recipients.

**Findings for Objective 1:** Describe the academic achievement of students in the scholarship program.

- On norm-referenced tests, scholarship recipients generally performed below the average U.S. student at their grade level.
- On criterion-referenced tests, the majority of scholarship recipients failed to meet benchmark proficiency scores.
- Outcomes were even poorer for African-American participants who made up the majority of scholarship recipients (65%).
- These findings are similar to those of the National Assessment of Educational Progress for students attending public schools in Alabama.

**Findings for Objective 2:** Compare the learning achievement of scholarship recipients to students attending public schools.

- There were very few subject areas in which more than 50% of the students met proficiency standards for either group of students.
- For the ACT Aspire, comparisons did not present a clear pattern across subjects and grade levels to indicate that one group performed better or worse than the other.
- Overall, scholarship recipients in the 11<sup>th</sup> grade performed about the same as their public school counterparts on the ACT.

**Findings for Objective 3:** Assess changes in achievement across time.

- On average, over time, participating in the scholarship program was not associated with significant improvement on standardized tests scores.
- On the ACT Aspire, students were more likely to remain in a non-proficient category than to improve. Although proficiency rates for 2016-2017 were higher for scholarship students than those of Alabama poverty students, the majority of students in both groups did not meet proficiency benchmarks.
- The overall lack of change over time follows the same pattern seen in public school students in Alabama and is likely not attributable to participation in the scholarship program.

**Issues for Future Evaluations:**

- Drawing conclusions regarding the academic achievement of scholarship recipients relative to students attending public schools depends on the number of schools with scholarship recipients that use tests that are utilized by ALSDE in the future.
- ALSDE discontinued the use of the ACT Aspire for the 2017-2018 academic year, and may change achievement tests again in 2018-2019. This will further constrain comparisons between scholarship recipients and students attending Alabama public schools over time.

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## List of Abbreviations

AAA	Alabama Accountability Act
AA	African American
AL	Alabama
ALSDE	Alabama State Department of Education
FERPA	Federal Education Rights and Privacy Act
ISSR	Institute for Social Science Research
N	Number of people in a group
n	Number of people in a subgroup
NAEP	National Assessment of Educational Progress
PDF	Portable Document Format
PSAT/NMSQT	The Preliminary SAT/National Merit Scholarship Qualifying Test
<i>r</i>	Correlation coefficient
SGO	Scholarship Granting Organization

## Evaluation of the Alabama Accountability Act: Academic Achievement Test Outcomes of Scholarship Recipients 2016 - 2017

### Introduction

In September, 2016, the Institute for Social Science Research (ISSR) at the University of Alabama completed the first state-mandated evaluation of the academic outcomes of students receiving scholarships under the Alabama Accountability Act (AAA) as set forth in the AAA legislation. Thus far, in two previous reports, the ISSR has described the achievement test results for the 2014-2015 and 2015-2016 academic years and compared the outcomes to students attending public schools in Alabama. The current report follows a similar approach with the 2016-2017 achievement test results and additionally examines changes in scholarship recipients' achievement test scores over time in comparison to comparable children attending public schools in Alabama.

This report first provides an overview of pertinent AAA legislation. Next, the methodology is described including improvements from the 2017 report, continued challenges in data collection, and issues with compliance with the AAA. A summary of data collection efforts and findings for students receiving tuition scholarships in the 2016-2017 academic year is then provided, followed by comparisons to public school children, and an analysis of changes in test scores over time.

### Overview of AAA

This report fulfills the evaluation component of the 2013 Alabama Accountability Act by providing evidence for the academic achievement of scholarship recipients in the 2016-2017 academic year. The Alabama Accountability Act (AAA), passed by the legislature in 2013 and amended in 2015, established a scholarship program for low-income students to attend public or private schools. Tax-deductible donations for scholarships are managed by Scholarship Granting Organizations (SGOs), which must comply with the standards set by the AAA. The AAA places restrictions on who can receive scholarships based on family income and school zoning. All students receiving scholarships must meet family income eligibility requirements. Priority is given to students who are zoned to attend a failing public school as designated by Alabama State Department of Education (ALSDE). However, students meeting AAA income requirements who attend non-failing public schools may receive scholarships if additional funds are available. Scholarships are awarded from the SGO to the student to attend a school that must meet standards set forth in the AAA. Scholarships may cover all or part of tuition and mandatory fees for one academic year. In 2015, the legislature amended the AAA to place limits on the amount that could be awarded depending on the grade level (elementary, middle, or high school). The Alabama State Department of Revenue oversees implementation of the AAA.

### Scholarship Recipient Testing Requirements

The academic accountability standards require the SGOs to ensure that schools accepting scholarship students “annually administer either the state achievement tests or nationally recognized norm-referenced tests that measure learning gains in math and language arts to all students receiving an educational scholarship in grades that require testing under the accountability testing laws of the state for public schools.” The purpose of these tests is to assess the learning gains for scholarship recipients and to provide a means of comparing scholarship recipients to students who attend Alabama public schools.

### Evaluation Reporting Requirements

The AAA states that the evaluation shall include the following:

- The learning achievements of students receiving educational scholarships aggregated by the grade level, gender, family income level, number of years of participation in the tax credit scholarship program, and race of the student receiving an educational scholarship.
- A comparison of the learning gains of students participating in the tax credit scholarship program to the statewide learning gains of public school students with socioeconomic and educational backgrounds similar to those students participating in the tax credit scholarship program.
- A report to be made every two years, starting in 2016.

Thus, the current 2018 report has three major objectives: a) describe the academic achievement of students in the scholarship program for the 2016-2017 school year, b) make comparisons between the learning achievement of the scholarship recipients and comparable students attending public schools for the 2016-2017 school year, and c) measure the learning gains of students in the scholarship program over time.

### Alabama Mandated State Testing in Public Schools 2016-2017 Academic Year

Students attending public schools in Alabama during the 2016-2017 academic year were tested in March and April. Math and reading were assessed with the ACT Aspire for students in grades 3 - 8 and 10. Eleventh graders were required to take the ACT college entrance exam.

### Method

Before the findings are presented it is important to recognize several challenges to meeting the evaluation objectives set forth in the AAA. As noted in the previous reports, the lack of a uniform achievement test among schools limits the conclusions that can be made about student learning gains. Scores from a total of 21 unique tests were provided. Comparisons across tests are invalid because tests vary in their content and are designed for unique purposes. Norm-referenced tests, such as the Iowa Test of Basic Skills and the Stanford Achievement Test, and criterion-referenced tests, such as the ACT Aspire, are based on different standards and cannot be directly compared.

Criterion-referenced test scores typically describe student success in terms of meeting achievement readiness benchmarks that indicate if the student is on track to meeting a long term academic goal, such as entrance to college. In theory, 100% of the students in Alabama could achieve these criterion benchmarks. In contrast, norm-referenced tests are designed to compare student achievement relative to others at a particular grade level and distinguish between high and low achievers. For example, a student scoring at the 70<sup>th</sup> percentile on a norm-referenced test achieved a score that was better than or equal to 70 percent of students in the nation at his or her grade level taking the same test. In criterion-referenced tests, the emphasis is on achieving scores that meet benchmarks, and consequently, percentile scores are less meaningful with respect to achievement. Even tests within the same broad categories of norm- or criterion-referenced cannot be combined for analyses since each test has unique content and unique scoring systems.

A second challenge was that some tests were used by only one school or included only a small number of students, making comparisons unreliable. Guidance from ACT recommends a sample of at least 25 students to achieve a reliable representation of students, and this standard was adopted in this report.

Inconsistencies in test reports provided by participating schools and missing data persisted as problems in the 2016-2017 school year. Schools did not reliably provide national percentile and scale scores for math, reading, and language arts/English, and missing data were often associated with specific test forms and schools. These inconsistencies in test score reporting and missing data compromise the integrity of the report findings. ISSR continues to work with the SGOs to communicate to the schools the information that is needed in the test reports.

With these challenges noted, the remainder of the report describes outcomes for the 2016-2017 academic year. Statistical comparisons were conducted throughout the report to aid in drawing conclusions. T-tests were used to compare the average scholarship student test scores to established benchmarks, to compare genders, or to compare racial/ethnic groups of scholarship students. Chi-square analyses were used to compare the proportion of scholarship students across different demographic (e.g., race) and proficiency groups. Z-tests were used to compare the percentages of scholarship students meeting benchmarks to comparable indicators of public school students. Correlations were used to assess the relation between achievement test scores and the number of years of participation in AAA scholarship program. These statistical tests take into account the sample size and the variation in the data to inform us of the likelihood of a reliable difference. As is customary in educational research, a probability value (*p*) of  $\leq 0.05$  was used as the criterion to determine significance.

### Data Sources

The following data sources were used to evaluate the academic achievement of the 2016-2017 scholarship recipients:

- 2016-2017 demographic reports from the four active SGOs: Scholarships for Kids, AAA Scholarship Foundation, Alabama Opportunity Scholarship Fund, and Rocket City Scholarship Granting Organization.



- 2016-2017 test scores provided by the participating schools. The SGOs collected the majority of the test reports and then shared them with ISSR. Test scores were received as PDFs and hard copies.
- 2016-2017 Alabama State ACT Aspire proficiency results and the 11<sup>th</sup> grade ACT results available from the ALSDE website.
- 2014-2015 and 2015-2016 Alabama State ACT Aspire proficiency results.
- 2014-2015 and 2015-2016 achievement test scores from scholarship recipients.

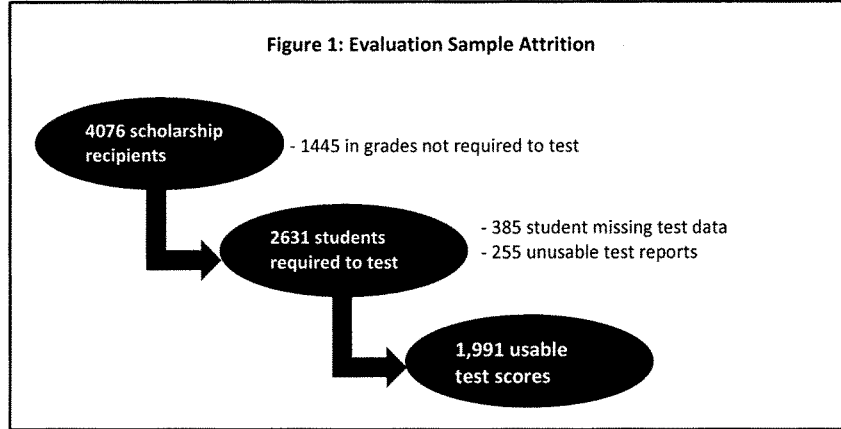
### 2016-2017 Evaluation Sample

The SGOs reported that a total of 4076 students (50% female) in kindergarten through 12<sup>th</sup> grade had received scholarships during the 2016-2017 academic year. The majority of the students (~78%) had received at least one previous scholarship: 13% had received one previous award, 48% had received two previous awards, and 17% had received three previous awards. Nearly all students were free/reduced lunch eligible (90%). The scholarship recipients primarily represented three racial/ethnic groups, Black/African American (65%), White/Caucasian (19%), and Hispanic (10%), and 6% were another race or no information was provided. Students resided in 51 counties in the state, with approximately 32% zoned to attend a failing school.

Students in grades kindergarten through second grade and grades 9 and 12 comprised 1445 (35%) of scholarship recipients and were not required to be tested according to the AAA because these grades are not tested in public schools in Alabama. A total of 2631 students were in grades 3 - 8, 10, and 11 (the grades aligned with state-mandated testing and included in this report). Test score reports were provided for 2246 (85%) of these students. Of the 385 students with missing test data, a small number (62) were absent or were not enrolled in the school at the time of testing and 8 students did not test because they were designated as special needs. For the remaining 315 students with missing data, no definitive explanation was provided.

### Achievement Test Data for 2016-2017 Scholarship Participants

Twenty-one different standardized tests were given by 149 different schools. Unfortunately, some schools used tests that few or no other schools used. These schools typically had a low number of scholarship recipients. Making public these test results (especially when disaggregated by grade, race, or gender) would lead to undesirable results: a) Schools and individual children could be identifiable; the latter is a violation of FERPA; and b) Small samples, as noted earlier, are not likely to be representative of the full group of scholarship recipients. For these reasons, results from these schools would not contribute meaningfully to the AAA evaluation and therefore, the 255 students attending these schools were eliminated from this evaluation. Figure 1 provides a flow chart that summarizes factors affecting the 2016-2017 sample size.



A total of 1,991 students or 76% of students for whom testing was required according to the AAA had potentially reportable test data from seven standardized tests: 1) The ACT (college entrance exam), 2) ACT Aspire (also used by ALSDE), 3) The Iowa Test of Basic Skills, 4) The PreACT (college entrance exam), 5) The Practice SAT-National Merit Scholarship Qualifying Test (PSAT/NMSQT), 6) The Stanford Achievement Test 10, and 7) Terra Nova. The table below indicates the number of students who took each test and the number of schools represented by each test. Students in this group attended 110 unique schools. The discrepancy between this total and the numbers listed in the table is due to some schools giving more than one test (e.g., a K-12 school might give the ACT Aspire for grades 3 - 8, the PSAT/NMSQT for grade 10, and the ACT for grade 11). Further attrition occurred due to missing test scores because schools might not have included a particular subject area in their reports, did not report usable scores (e.g., percent or number correct) or individual students may not have tested in a subject area. These instances are described as the results for each test are presented.

Test	Number of Students	Number of Schools
ACT	46	21
ACT Aspire	331	20
Iowa Test of Basic Skills	1052	57
PreACT	78	6
PSAT/NMSQT	99	19
Stanford Achievement Test 10	343	26
Terra Nova	42	7
<b>Total</b>	<b>1,991</b>	

## Description of Tests

Nearly all of the tests provided by the schools purport to base their test questions on nationally recognized educational standards, such as those of the National Assessment of Educational Progress (NAEP). They provide a score, such as a national percentile, that can be used to evaluate student performance relative to other students in the U.S. A child who scores at the 50th percentile is performing as well as or better than half of the students in the nation who are at the same grade level. Scale scores are derived from the number of items answered correctly and are often used to determine if students are meeting grade level benchmarks. Generally, scores on these tests are used to assess whether students or school systems have met requirements set by national or state standards, and consequently meet the testing requirement put forward in AAA. A brief description of each of the seven tests follows.

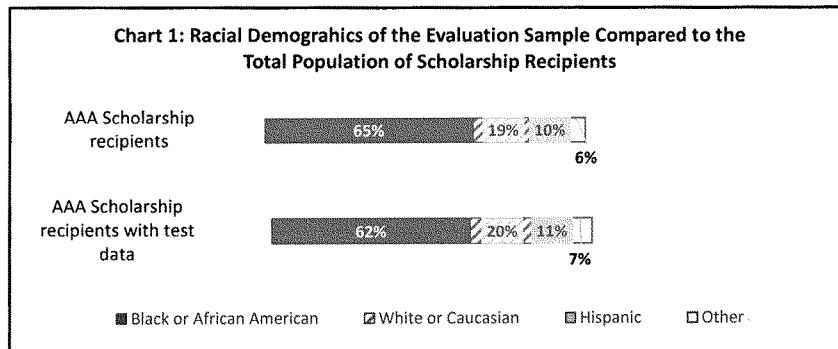
- The *ACT* is a nationally normed college entrance exam. The scores are used to predict college readiness. Reports include an ACT score (1-36) and a national percentile score. Subscale scores are provided for reading, English, and math. It is usually taken by high school juniors and seniors.
- The *ACT Aspire* assesses progress toward college and career readiness using criterion referenced benchmarks (e.g., state a definition, theorem, formula or axiom; understand cause and effect relationships; apply an understanding of the conventions of standard English grammar, usage, and mechanics to revise and edit text). The ACT Aspire includes test scores for reading, English, and mathematics, in addition to other areas. Scale scores indicate students' performance against a set of learning standards for each grade level. ALSDE has adopted the benchmark scores used by ACT Aspire to create four proficiency levels: *In need of support* (Level 1), *Close* (Level 2), *Ready* (Level 3), and *Exceeding* (Level 4). Students scoring at Level 3 or higher are considered proficient. National percentile scores comparing students' scores relative to other students in the country at the same grade level are also provided by ACT. Unlike the benchmark categories, the percentile scores are not readily interpretable as to whether a child is meeting learning standards for their grade.
- *Iowa Test of Basic Skills* was developed by the Education Department at the University of Iowa and is a norm-referenced test. Test items were developed to align with the Iowa Core of State Educational Standards. In contrast to the ACT Aspire benchmarks, interpreted alone the percentile scores do not indicate if a child has acquired the academic skills and content that are appropriate for his or her age group. The test has been validated at the national level, and it provides national percentile scores for reading, English, and math.
- *The Practice SAT - National Merit Scholarship Qualifying Test* (PSAT/NMSQT) is used to prepare students to take the SAT college entrance exam and is usually taken in the 10<sup>th</sup> and 11<sup>th</sup> grades of high school. The scores include a composite score that aligns with a predicted SAT score, as well as a subscale score in math and a combined reading and writing subscale score. National percentile scores are provided for all subject areas.
- *The PreACT* is used to prepare high school students to take the college ACT. The scores can be used to predict how well a student might perform on the ACT college entrance exam. Reports include an estimated ACT score (1-36), and college readiness indicators are provided for 10<sup>th</sup> graders. Subscale scores are provided for reading, English, and math. High school

students commonly take this test their second year of high school. National percentile scores were not included in the test reports for the PreACT

- The *Stanford Achievement Test 10* is a norm-referenced test similar to the Iowa Test and was developed, among other reasons, to compare a child’s academic achievement relative to others in the nation. The Stanford provides achievement/ability scores in language, reading, and math, including national percentile scores.
- *Terra Nova, 3<sup>rd</sup> edition* is a norm-referenced test similar to the Stanford Achievement Test and Iowa Test. The test content aligns with the framework of the NAEP. The national percentile scores indicate how well a child compares to other students at the same grade level, similar to the Stanford Achievement Test. Included in the report are scores for language, reading, and math.

**Demographic Information for Scholarship Recipients Included in the Evaluation**

Based on information provided by the SGOs, the 1,991 scholarship recipients with usable test scores were very similar to the larger group of scholarship recipients. The majority had received a scholarship previously: Fifteen percent (15%) were first time scholarship recipients, 11% were two time scholarship recipients, 51% were three time recipients, and 22% were in their fourth year. (This information was missing for 1% of the students.) Nearly all were eligible for free or reduced lunch (90%). The SGOs reported that 34% (677) of the scholarship recipients were zoned to attend a public school that was designated as failing by the ALSDE. As with the larger sample (Chart 1), the racial/ethnic make-up of the sample was predominantly from three groups, Black/African American (62%), White/Caucasian (20%), and Hispanic (11%), and the remaining 7% of students were either another race, more than one race, or no race was designated. There were slightly more female (52%) than male students. Students represented 43 counties in the state and attended 114 different schools.



## Findings for the 2016-2017 Academic Year

In this section, outcomes are described for each of the seven tests. For each test a brief description of the student demographics is provided, and additional test details relevant for understanding the test scores are given. When possible, test scores disaggregated by grade, race/ethnicity, and gender are presented. Statistical tests comparing scores among racial/ethnic groups and between genders were conducted when there were sufficient numbers of students in these groups ( $n \geq 25$ ). National percentile scores are included for most tests. When relevant, scale scores were reported to aid in interpreting the test score information. Due to rounding, sometimes percentages in a table or chart sum to a number slightly greater or less than 100%.

### Objective 1: Describe the Academic Achievement of Scholarship Recipients

The presentation of the results is organized by the type of test, norm- or criterion-referenced, since the tests within each type measure achievement in similar ways. The first three tests, Stanford Achievement Test 10, Terra Nova, and Iowa Test of Basic Skills are norm-referenced tests. The criterion-referenced ACT Aspire, PreACT, ACT, and PSAT/NMSQT are summarized next. The AAA asks for test scores for math and language arts subject areas. For some tests, English scores were provided rather than language arts, but the content of these subjects was similar. Furthermore, because the State of Alabama uses reading scores to evaluate public school students, reading scores are included in this report as well. Due to the low representation of other races/ethnicities (typically 1.5% or less), descriptive information is only provided for Black/African American, White/Caucasian, and Hispanic groups.

#### Norm-Referenced Test Results

##### *Stanford Achievement Test 10*

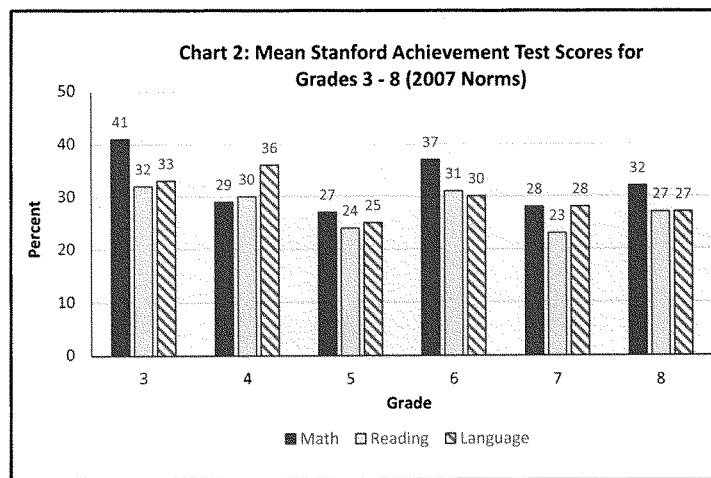
The Stanford Achievement Test 10 was given to 343 students in grades 3 through 11. There was not a sufficient number of test scores (25 or more) available for the 10<sup>th</sup> and 11<sup>th</sup> grades, which reduced the sample size to 312 for grades 3 through 8.

There were slightly more male than female students (52% male) and the racial make-up was predominantly Black/African American (72%), followed by White/Caucasian (22%). The majority of students had received a scholarship previously (82%), and most of this group (87%) had received two or more scholarships previously. As with the larger sample, nearly all students were free/reduced lunch eligible (93%).

As in previous years of this report, some schools used 2002 norms in reporting the national percentile scores, despite the availability of more recent 2007 norms. Although neither set of norms is current, the better indicator of student achievement relative to national standards is the more recent 2007 norms, and consequently this standard was used in this report. It should be noted that the two tests are identical, and only the national percentile scores are different. Table 1A in the Appendix presents detailed data for each grade level for the sample as a whole and for demographic groups, with scale scores included as a reference point for the two sets of norms. Chart 2 below summarizes the findings for students who took the Stanford Achievement Test.

Examining the results for all children at each grade level revealed that the average percentile scores for each grade level were low, with the highest being 41% (3<sup>rd</sup> grade math) and the lowest being 23% for 7<sup>th</sup> grade reading as shown in Chart 2.

There were sufficient numbers of students (25 or more) to report scores separately for Black/African American, male, and female students for some grade levels. However, statistical comparisons could not be made among racial/ethnic groups due to the lack of a comparison racial group with a sufficient sample size. Gender comparisons could be made for 7<sup>th</sup> and 8<sup>th</sup> grade scores. These tests revealed that 8<sup>th</sup> grade girls performed significantly higher than boys in language arts (Means = 38<sup>th</sup> percentile vs. 15<sup>th</sup> percentile) and reading (Means = 36<sup>th</sup> percentile vs. 19<sup>th</sup> percentile). No other differences were significant.



*Terra Nova*

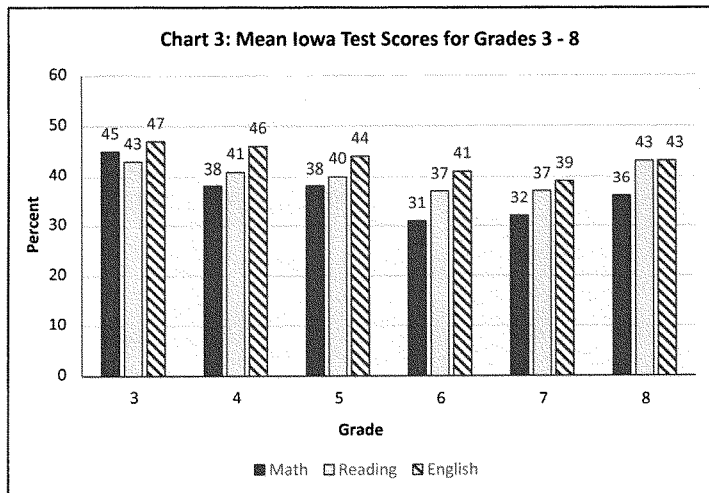
Usable Terra Nova test score results were available for 42 students in grades 3 through 8 who represented seven schools (Table 2). There were insufficient numbers of students at each grade level to report results disaggregated by grade, so the table below provides the results for all grades combined. The Terra Nova test takers were 62% female, 50% Black/African American, and 45% White/Caucasian. First time scholarship recipients comprised 19% of this group and 78% had been a scholarship recipient for three or more years. Nearly all of the students (91%) were free/reduced lunch eligible. Separate scores for racial groups are not reported due to the small numbers in each group. For gender, only female students had a sufficient number to meet the criterion for reporting. As a consequence of the low numbers, no statistical comparisons were made. Generally, the mean scores are at or slightly above 50%, suggesting that the students taking the Terra Nova ranked near the middle of students nation-wide who took the test.

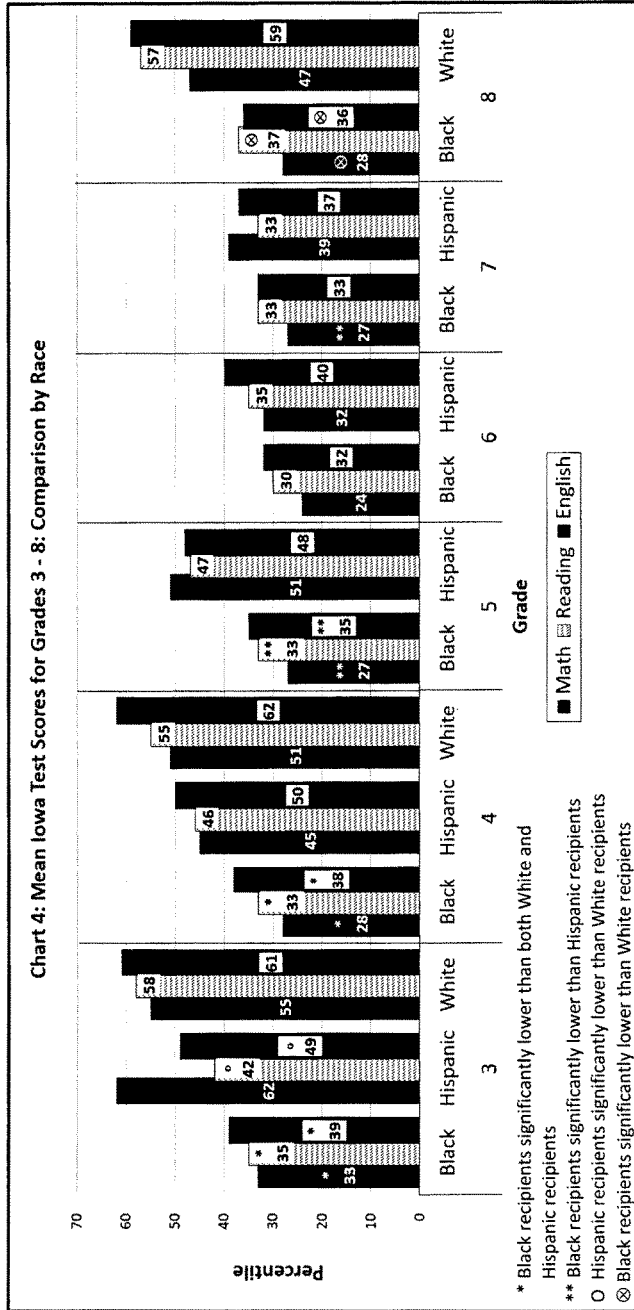
Grades	Group (N)	Math Percentile	Reading Percentile	Language Percentile
3 - 8	All (40-42)	50	55	54
	Female (24-26)	50	57	53

*Iowa Test of Basic Skills*

The Iowa Test was administered to 1052 students in grades 3 through 8 and in grades 10 and 11. However, not all test reports included the national percentile scores, reducing the Iowa test sample to 1032. The racial/ethnic make-up consisted of 58% Black/African American, 17% White/Caucasian, and 18% Hispanic students. First time scholarship recipients comprised 12% of the Iowa test takers, and 79% were in their third or fourth year of receiving a scholarship. The vast majority were free/reduced lunch eligible (93%), and 49% of the test takers were female.

The number of students in grades 10 ( $n = 11$ ) and 11 ( $n = 6$ ) were too small to provide reliable results. Chart 3 provides the results for the remaining grades and Table 2A in the Appendix provides the detailed data for each grade level disaggregated by gender and race when appropriate. Examining the results for all students at each grade level revealed that average scores ranged from 31% (6<sup>th</sup> grade math) to 47% (3<sup>rd</sup> grade English), indicating that on average scores were below the median for the country. There were large enough numbers to break down performance for every grade level by gender and race (White/Caucasian, Black/African American, and Hispanic). Statistical comparisons among the racial/ethnic groups were made for each grade level when there were sufficient numbers of students as indicated in Chart 4.







Regardless of the subject area, White/Caucasian students scored significantly higher than Black/African American students. Hispanic students outperformed Black/African American students in all subject areas in grades 3 through 5, except 3<sup>rd</sup> grade reading. In 6<sup>th</sup> grade there were no significant differences between these two racial/ethnic groups, and in 7<sup>th</sup> grade Hispanic students scored higher in math. Only grades 3 and 4 had enough students to make comparisons between White/Caucasian and Hispanic students. For third graders, White/Caucasian students did better than Hispanic students in reading and English. There were no other differences between these two groups of students. Comparisons between genders for each grade level yielded one significant effect: In the fourth grade, girls scored significantly higher than boys in English (Means = 52<sup>nd</sup> percentile vs. 42<sup>nd</sup> percentile).

*Summary for Norm-Referenced Test Results*

In interpreting norm-referenced tests, it is important to be mindful that the percentile scores are an assessment of students' performance relative to other children at the same grade level in the country. By themselves, the scores do not indicate if a child has acquired the knowledge and skills expected for their grade. Although the 50<sup>th</sup> percentile is often used as the yardstick for evaluating performance, it is not a good indicator of a child, or a group of children, having mastered grade-level material. As a marker for performance, however, the scholarship recipients' mean scores should be close to the 50<sup>th</sup> percentile, if as a group they are achieving at levels similar to others in the U.S. Generally, meeting or exceeding this standard would be considered a positive outcome. A review of the percentile scores provided in the previous three tables indicates that nearly all of the average percentile scores were below the 50<sup>th</sup> percentile. Subsequently, statistical comparisons were made separately for each test to assess if the mean scores in each subject area were significantly lower than the 50<sup>th</sup> percentile.

Considering first the Stanford Achievement Test, the average scores for each grade level and subject area were generally significantly below the 50<sup>th</sup> percentile. The exceptions were for 3<sup>rd</sup> grade math (all 3<sup>rd</sup> graders, African American/Black, and females) and language for female students, which were not significantly different from the 50<sup>th</sup> percentile score.

For the Iowa Test, with one exception, the mean scores for all students (combined across race and gender) at each grade level were significantly below the 50<sup>th</sup> percentile mark. The exception was for 3<sup>rd</sup> grade English, which was not significantly different from the 50<sup>th</sup> percentile. The results differed somewhat for the three racial/ethnic groups.

- Black/African American students performed significantly lower than the 50<sup>th</sup> percentile at all grade levels.
- White/Caucasian students' scores were significantly above the 50<sup>th</sup> percentile for 3<sup>rd</sup> grade reading and English and for 4<sup>th</sup> grade English, but did not differ from the 50<sup>th</sup> percentile in any other comparison.
- Hispanic students' scores were significantly higher than the 50<sup>th</sup> percentile for third grade reading, but lower than the 50<sup>th</sup> percentile for nearly all subjects in 6<sup>th</sup> and 7<sup>th</sup> grade. Hispanic students' scores did not significantly differ from the 50<sup>th</sup> percentile in all other grades and subjects.

Male and female students' scores were generally significantly below the 50<sup>th</sup> percentile scores. Exceptions in which scores were not significantly lower were for 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> grade English for girls and 4<sup>th</sup> grade math for boys.

For the Terra Nova tests, due to the small number of students, mean percentile scores were combined across all grade levels as indicated previously. The mean percentile scores combined across all grade levels did not significantly differ from the 50<sup>th</sup> percentile. This replicated the findings from the previous years and suggests a generally better outcome for this group of students. For three years in a row, students taking the Terra Nova test did not perform significantly lower than the students in the U.S., performing at the median. In previous reports several hypotheses were entertained to explain why the results for Terra Nova were relatively better compared to the other tests, which are applicable for this report as well. Discrepancies could be due to differences in the content of the tests or differences in the schools that happened to choose one test over another that may produce higher levels of achievement (e.g., curriculum, pedagogical approaches). The demographic make-up of this group of test takers was somewhat different than those who took the Iowa and Stanford tests, having relatively more White/Caucasian and female students, which are both factors that are sometimes associated with higher standardized test scores. However, the free-reduced lunch rate was similar. There were only 42 students included in this group compared to 1344 students who took either the Iowa or the Stanford. Thus, due to small sample size, the results from the Terra Nova are likely not representative of the larger group of scholarship recipients.

The summary graphic below provides the key findings for the norm-referenced tests. Together the results generally indicate that the scholarship students as a group do not perform better than the national average on these tests, and it is more typical for them to perform below average compared to other students in the U.S. In each of the previous reports there have been anomalous findings to this generalization for specific grades and standardized tests, as there are in this report. No discernable pattern has emerged that would suggest that the grade level of the scholarship recipient impacts performance on the standardized tests in a systematic way. As noted in previous reports, there is likely variation among schools, tests, and students that cannot be accounted for in this evaluation. With the relatively small sample sizes there is an increased probability of variation among the grades that may result in some grades performing better than others. This could be due to any number of performance related factors, such as ability, having a good testing day, or difference in teacher quality, among others.

When it was possible to make racial/ethnic comparisons using the larger sample of Iowa test scores, Black/African American students performed more poorly than White/Caucasian students, and although less consistently found, they also performed more poorly than Hispanic students. Hispanic and White/Caucasian students could only be compared in two grades where the groups did not differ in four of the six comparisons made.

Summary for Norm-Referenced Test Results		
<p><b>Scholarship students as a group did not perform better than other students in the U.S.</b></p> <ul style="list-style-type: none"> <li>• It was most typical for students to perform below average compared to the nation.</li> <li>• Outcomes were even poorer for African-American participants who made up the majority of scholarship recipients (65%).</li> </ul> <p><b>There are anomalous findings to this generalization for specific grades and standardized tests:</b></p> <ul style="list-style-type: none"> <li>• No discernable pattern has emerged indicating that the grade level of the scholarship recipient impacts performance on the standardized tests in a systematic way.</li> <li>• Small sample sizes for some grade levels and tests adversely impact the reliability of these findings.</li> </ul>		
Stanford Achievement Test	Terra Nova	Iowa Test
<p>The average scores for each grade level and subject area were at or significantly below the 50<sup>th</sup> percentile.</p> <p><b>Exceptions:</b></p> <ul style="list-style-type: none"> <li>✓ 3<sup>rd</sup> grade math</li> <li>✓ 3<sup>rd</sup> grade language arts for females</li> </ul>	<p>The mean percentile scores combined across all grade levels were not significantly different from the 50th percentile.</p>	<p>The average scores for each grade level and subject area were generally significantly below the 50<sup>th</sup> percentile.</p> <p><b>Results by racial group:</b></p> <ul style="list-style-type: none"> <li>✓ African-American students scored significantly lower than White and Hispanic students in some subjects and grades and below the 50<sup>th</sup> percentile overall</li> <li>✓ Third grade White students did better than Hispanic students in reading and English</li> <li>✓ Hispanic and White students scored above the 50<sup>th</sup> percentile for some subjects in 3<sup>rd</sup> and 4<sup>th</sup> grade</li> </ul>

## Criterion Referenced Test Results

*ACT Aspire*

The ACT Aspire test was administered to 331 students (61% female) in grades 3 through 8 and 10. Similar to other test groups a minority of students (27%) were first time scholarship recipients. Students who took the ACT Aspire were 61% Black/African American, 24% White/Caucasian, and 9% Hispanic. Most were eligible for free/reduced lunch subsidies (80%).

As noted earlier, scoring by ALSDE identifies four proficiency benchmarks that classify students as 1) *In need of support*, 2) *Close*, 3) *Ready*, and 4) *Exceeding* for reading and math. Students who are at or above the benchmark level 3 are considered to be on track to be college ready by 11<sup>th</sup> grade. Although not publicly reported for public school students, ALSDE does provide benchmarks for English. The average scale score, its corresponding national percentile rank and proficiency level are provided for each grade level in Table 3. There were sufficient numbers of students in many grade levels to disaggregate scores for Black/African American students and females. Table 3 below presents ACT Aspire scores for these groups when the sample size met the minimum standard.

The ACT Aspire is a criterion-referenced test, and as a result, the national percentile scores are interpreted differently compared to a norm-referenced test. For example, for reading, the average national percentile scores ranged from 47% to 56%, scores that are generally higher than those evident for the norm-referenced tests presented earlier. However, only one grade (grade 8) had average scores that fell in the “ready” proficiency category for reading. Because ALSDE only reports the proficiency group results, these ratings are the focus of this report.

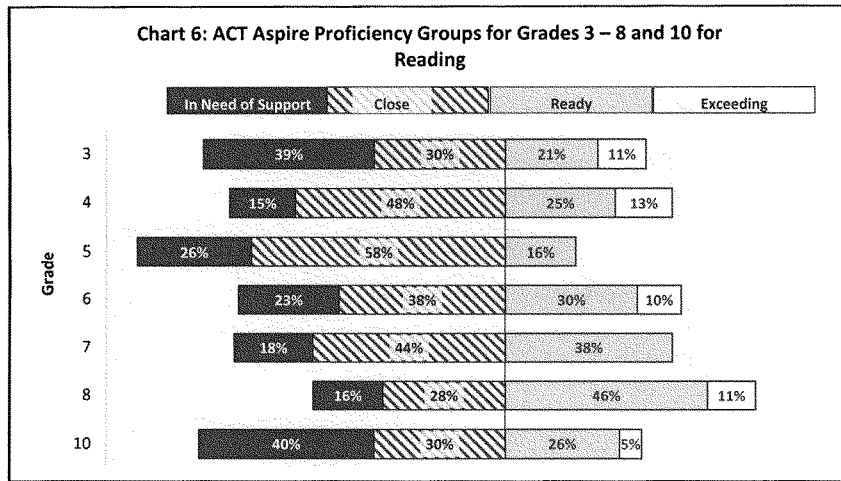
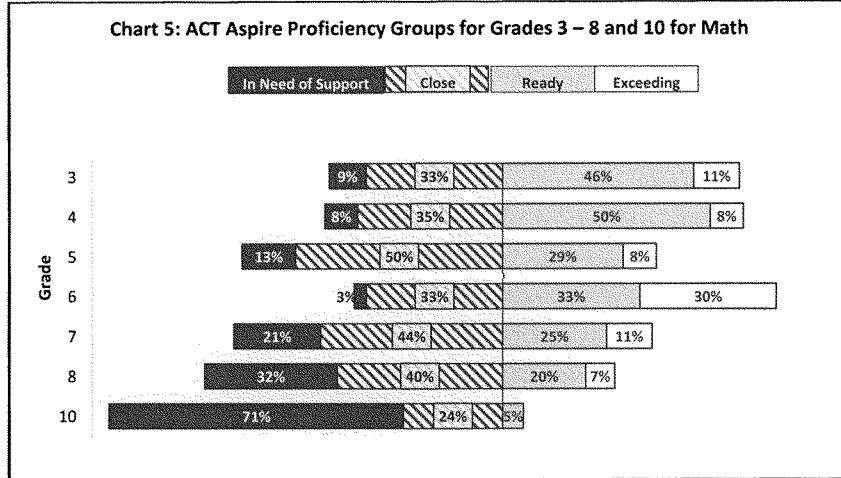
Examining the results presented in Table 3, there is a decidedly different pattern of results for English compared to math and reading. For all grade levels and subgroups, the average English scores reached the benchmark for “ready” or “exceeding.” In contrast, the majority of grade level averages for math and reading fell below benchmarks. The exceptions were for 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> grade math and 8<sup>th</sup> grade reading, all of which reached the “ready” benchmark. African American/Black students reached the “ready” proficiency level for math in grades 3 and 7, above the level for the grade as a whole. In contrast, they did not reach the “ready” benchmark at any grade level for reading. Female students’ scores evidenced the same levels of proficiency on average as the sample as a whole at each grade level.

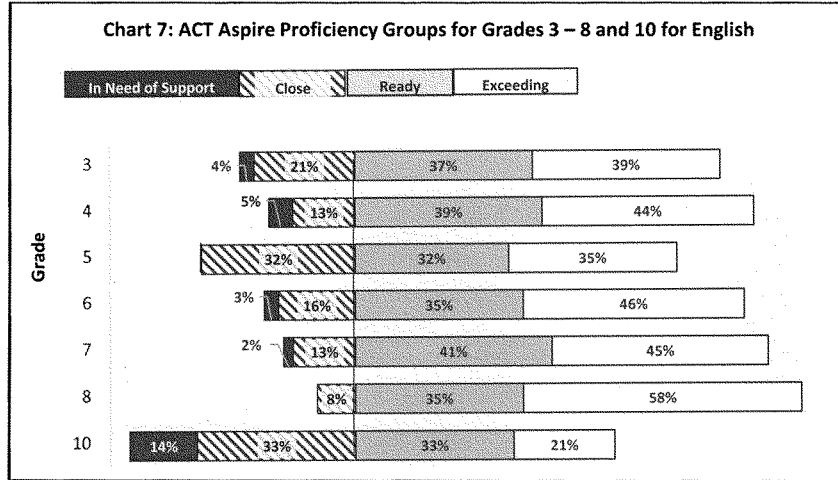
Because the ACT Aspire is also used by the ALSDE it was important to provide additional detail for this group of students. For each grade level, Charts 5-7 present the percentage of students at each proficiency level. (Detailed information on proficiency group percentages for each grade level is available in Table 3A in the Appendix.) Each subject area presents a different pattern of findings.

Grades	Group (N)	Math			Reading			English		
		SS	%	Prof. <sup>1</sup>	SS	%	Prof. <sup>1</sup>	SS	%	Prof. <sup>1</sup>
3	All (54)	413	47	3	412	50	2	417	53	3
	Black (40)	413	47	3	412	51	2	418	56	4
	Female (31)	412	46	2	412	50	2	417	54	3
4	All (39-40)	416	52	3	415	54	2	421	57	3
	Black (27)	415	49	2	415	50	2	421	55	3
	Female (*)	*	*	*	*	*	*	*	*	*
5	All (37-38)	417	45	2	416	47	2	423	50	3
	Black (*)	*	*	*	*	*	*	*	*	*
	Female (26-27)	417	46	2	417	50	2	423	53	3
6	All (37-40)	423	61	3	419	51	2	427	58	4
	Black (*)	*	*	*	*	*	*	*	*	*
	Female (28)	423	61	3	420	55	2	427	61	4
7	All (54-57)	420	52	2	420	53	2	428	56	3
	Black (32)	422	58	3	421	55	2	428	56	3
	Female (35)	419	48	2	421	53	2	428	56	3
8	All (54-57)	422	50	2	424	56	3	430	59	4
	Black (27-28)	421	46	2	422	49	2	428	54	3
	Female (33)	421	48	2	424	53	3	429	57	4
10	All (39-43)	422	37	1	422	47	2	429	45	3
	Black (26-29)	421	35	1	421	45	1	428	43	3
	Female (<25)	*	*	*	423	50	2	431	49	3

\* Indicates an insufficient number of students in the group (< 25) for reporting.  
<sup>1</sup> Prof. = Proficiency Groups: 1—*In need of support*, 2—*Close*, 3—*Ready*, and 4—*Exceeding*  
SS = Scale Score, % = percentile score

For math (Chart 5), the majority of students in grades 3, 4, and 6 scored at level 3 (Ready) or Level 4 (Exceeding), but at all other grade levels the majority of students did not reach proficiency benchmarks. In 5<sup>th</sup> grade half of students are at Level 2 (Close), and in the 10<sup>th</sup> grade, most students performed at Level 1 (In need of support). In contrast, the percentage of students meeting benchmarks for reading was much lower (Chart 6). The majority of scholarship recipients were in proficiency levels 1 or 2 for most grades. Only the 8<sup>th</sup> grade had a majority of students reaching proficiency levels 3 and 4. Finally, the majority of students at all grade levels performed at levels 3 or 4 in English in grades 3 - 8 (Chart 7). In 10<sup>th</sup> grade, about half of students performed at levels 3 or 4.





**PSAT/NMSQT**

The PSAT/NMSQT was administered to 99 students in grades 8, 10, and 11. Of these students, only 4 (4%) were first time scholarship recipients, 10% had received their first scholarship the previous academic year (2015-2016), and the remainder (86%) had participated in the scholarship program for three years or more. These students were nearly evenly divided by gender (49% female), and nearly all were free/reduced lunch eligible (90%). The racial/ethnic make-up was 74% Black/African American, 17% White/Caucasian, and 5% Hispanic. Only grades 10 and 11 met the minimum requirement of 25 students for reporting (43 and 48 students, respectively). Only the Black/African American racial/ethnic group was represented in sufficient numbers to report their results separately, and neither gender met the sample size criterion to report disaggregated results. The PSAT/NMSQT combines reading, writing, and language scores into an “evidenced-based reading and writing score.” As a result, the combined percentile scores are presented in Table 4.

The reading-writing and the math scores are aligned with benchmarks used to predict college readiness. The benchmark scores correspond to a 75% likelihood of achieving a grade of “C” or better in the first semester of college for courses in related areas. Scoring for the PSAT/NMSQT places students’ scores into one of three categories: *Need to strengthen skills*, *Approaching benchmark*, or *Met or exceeded benchmark*. For both 10<sup>th</sup> and 11<sup>th</sup> grade students, the average math score is categorized as “Need to strengthen skills.” For 11<sup>th</sup> graders the average reading-writing score met the benchmark, but for 10<sup>th</sup> grade this score fell into the “approaching benchmark” range. The average scores for African American/Black students in 11<sup>th</sup> grade were categorized as “need to strengthen” for both reading and math.

Grade	Group (N)	Math		Reading-Writing	
		Percentile	Benchmark	Percentile	Benchmark
10	All (40-41)	27	Need to Strengthen	34	Approaching
	Black (28-29)	23	Need to Strengthen	31	Need to strengthen
11	All (33-36)	28	Need to strengthen	42	Met
	Black (*)	*		*	

\* Indicates an insufficient number of students in the group (< 25) for reporting.

Examining the full distribution of scores for each grade level revealed the following patterns:

- 10<sup>th</sup> grade: 15% met the math benchmark; 36% met the reading-writing benchmark
- 11<sup>th</sup> grade: 15% met the math benchmark; 42% met the reading-writing benchmark

#### *PreACT Test*

The PreACT Test was administered to 78 students in grades 10 and 11. The racial/ethnic make-up of this group of students was 60% Black/African American, 30% White/Caucasian, and 1% Hispanic. Females (55%) had a slight majority over males (45%), and similar to the larger sample, most (90%) were free/reduced lunch eligible. Only 6% were first-time scholarship recipients, 12% had received one previous award, and 82% had received a scholarship for three or more years. For 10<sup>th</sup> grade there were sufficient numbers of students to disaggregate scores for Black/African Americans and female students (Table 5).

The PreACT reports did not include percentile scores, only scale scores (range 1-36) that correspond to the ACT college entrance exam scores. Benchmark scores are provided to indicate college readiness. Specifically, these benchmarks indicate, “the level of achievement required for students to have a 50% chance of obtaining a B or higher or about a 75% chance of receiving a C or higher in corresponding credit-bearing first-year college courses” (PreACT Technical Bulletin p. 32). These benchmark scores correspond to the same benchmarks adopted by ALSDE: 22 for math, 22 for reading, and 18 for English.

Because the ACT is normally taken in the 11<sup>th</sup> grade, additional college readiness indicators are provided for 10<sup>th</sup> graders. The rationale behind the additional indicators is that 10<sup>th</sup> grade students will continue to gain skills and knowledge over the course of the year. As a result, these indicators can be used to make predictions as to the likelihood of meeting the benchmark scores in 11<sup>th</sup> grade. Three benchmark levels are defined for each subject area: *In need of intervention*, *On the cusp*, and *On target*. Table 5 presents the mean scores for 10<sup>th</sup> and 11<sup>th</sup> grade students and provides the corresponding college readiness indicator level for 10<sup>th</sup> graders.



Grade	Group (N)	Math		Reading		English	
		Scale Score	Readiness Indicator <sup>1</sup>	Scale Score	Readiness Indicator <sup>1</sup>	Scale Score	Readiness Indicator <sup>1</sup>
10	All (52-53)	16	Intervention	18	On Cusp	15	On Target
	AA/Black (32-33)	15	Intervention	16	Intervention	14	On cusp
	Female	17	On Cusp	18	On Cusp	16	On Target
11	All (25)	17	NA	18	NA	17	NA
	AA/Black (*)	*		*		*	
	Female (*)	*		*		*	

<sup>1</sup> Readiness indicators are for 10<sup>th</sup> grade students only. NA = not applicable  
 \* indicates an insufficient number of students in the group (< 25) for reporting.  
 Note. College benchmark scores are 22 for math and reading and 18 for English.

For 11<sup>th</sup> graders, the mean scale scores fell below benchmarks for college preparedness. To further investigate, the percentages of the students who met or exceeded the benchmark scores were calculated and indicated rates of 12% for math, 24% for reading, and 48% for English.

With the exception of English, the 10<sup>th</sup> grade scores generally did not meet the readiness benchmark. The percentages of students who fell into each of the three readiness categories were calculated, and the results are presented in Table 6.

Grade (N)	Math			Reading			English		
	Inter-vention	On Cusp	On Target	Inter-vention	On Cusp	On Target	Inter-vention	On Cusp	On Target
10 (52-53)	66%	25%	10%	57%	15%	29%	27%	15%	58%

Together these results suggest that the majority of 10<sup>th</sup> grade scholarship recipients who took the PreACT Test failed to meet national standards predictive of college achievement in math and reading. However their performance in English was much better, with more than half meeting the criterion of *on target*.

#### *ACT*

The ACT was administered to 46 students in grades 10 and 11. The majority of this sample was Black/African American (63%), followed by 15% White/Caucasian and 9% Hispanic. All but one student was eligible for free/reduced lunch and 52% were female. Similar to the other tests, only a small percentage were first year scholarship recipients (15%) and the majority (74%) were in their 3<sup>rd</sup> or 4<sup>th</sup> year of receiving a scholarship. Only the 11<sup>th</sup> grade had a sufficient number of students (32) to report scores, but there were not enough students to break out these scores by gender or race. Both percentile scores and scale scores are presented in the table below. The ACT College Entrance Exam scale scores range from 1 to 36.

Grade	Group (N)	Math		Reading		English	
		Scale Score	Percentile	Scale Score	Percentile	Scale Score	Percentile
11	All (32)	17	33	18	38	18	40

ALSDE has set benchmark scores for 11<sup>th</sup> grade ACT scores, which are identical to those described for the PreAct (22 for Math, 22 for Reading, and 18 for English) and interpreted similarly. The average ACT scale scores fell below benchmark scores for college preparedness for reading and math, but met the benchmark for English.

Additionally, four proficiency groups are identified by ALSDE that are comparable to those for the ACT Aspire. The percentages of 11<sup>th</sup> grade students falling into each group are presented below.

Group (N)	Math Proficiency Groups				Reading Proficiency Groups				English Proficiency Groups			
	1	2	3	4	1	2	3	4	1	2	3	4
	All (32)	72%	6%	16%	6%	44%	38%	12%	6%	38%	16%	9%

Proficiency Groups: 1—*In need of support*, 2—*Close*, 3—*Ready*, and 4—*Exceeding*

The percentages of the students in 11<sup>th</sup> grade who met or exceeded the benchmark scores were 22% for math, 18% for reading, and 47% for English. Together these results suggest that the scholarship recipients who took the ACT generally failed to meet national standards predictive of college achievement, although performance was better in English, relative to other subjects.

**Summary for Criterion-Referenced Test Results**

The key performance indicator for students taking criterion-referenced tests is the number of students making benchmarks on each of the tests. The summary graphic below presents the principal findings.

For students in grades 3 through 8, only the ACT Aspire findings are applicable, and results varied depending on the subject area. The majority of students at all grades and demographic groups achieved scores that met or exceeded benchmarks for English, but for reading, only 8<sup>th</sup> graders achieved this level of proficiency on average. The results for math fell between these two extremes, with three grade levels (3, 4, and 6) having the majority of students meeting or exceeding proficiency levels.

Tenth graders were represented in three different tests. The results were similar for the ACT Aspire and PreACT in that the majority of 10<sup>th</sup> graders met benchmarks for English, but not in any other subject area, showing the weakest performance in math (only 5% to 10% meeting proficiency

score targets). The majority of 10<sup>th</sup> graders did not meet benchmarks on the PSAT/NMSQT for reading-writing or math.

Eleventh grade students were also represented in three standardized tests: the PSAT/NMSQT, the PreACT or the ACT. Findings were similar across the three tests in that the majority of 11<sup>th</sup> grade students did not meet benchmark scores in math, reading, or English.

Taken together, the pattern of results suggests that most of the scholarship students did not make proficiency benchmarks in math and reading. In these subject areas, there were some grades that defied this trend, notably in math for grades 3, 4, and 6 and in reading for grade 8. However, the majority of high school students on each of the four achievement tests performed below the math and reading benchmarks. For English, students across grade levels and tests generally performed better relative to math and reading. This was especially true for the ACT Aspire test where the majority of students met the benchmarks for English. It is not clear why English scores are generally better than math and reading, but it is a bright spot in this report.

Summary for Criterion-Referenced Test Results	
<b>Generally scholarship recipients did NOT meet benchmarks for reading and math, although there were some exceptions:</b>	
✓	The majority of scholarship recipients in the 3 <sup>rd</sup> , 4 <sup>th</sup> , and 6 <sup>th</sup> grade <b>Met or Exceeded</b> benchmarks in <b>Math</b> on the <b>ACT Aspire</b> .
✓	The majority of scholarship recipients in the 8 <sup>th</sup> grade <b>Met or Exceeded</b> the benchmark for <b>Reading</b> on the <b>ACT Aspire</b> .
<b>For English, the pattern of findings varied by achievement test and grade level:</b>	
✓	On the <b>ACT Aspire</b> , in grades <b>3 - 8 and 10</b> the majority of scholarship recipients generally <b>Met</b> the benchmarks for <b>English</b> .
✓	In grades <b>10 and 11</b> , the majority of scholarship recipients <b>failed</b> to meet benchmarks for <b>English</b> on the <b>PSAT/NMSQT</b> and <b>ACT</b> .

**Objective 1 Conclusion**

Together the results generally indicate that the scholarship students as a group did not meet national achievement norms or benchmarks, although some exceptions have been noted. These findings need to be placed in a larger social context. The students in the AAA program belong to demographic groups (low income, racial minority groups) that have traditionally lagged behind other students in the state and in the country in academic achievement. Furthermore, many indicators, such as the NAEP assessments and the ALSDE annual reports, indicate that students attending public schools in the state of Alabama fall short of national standards. The information presented so far does not indicate whether the scholarship recipients' academic achievement represents an improvement, decline, or no change as a result of the AAA, nor does it indicate how these students directly compare to public school children in the state of Alabama. The next section of the report provides some insights on these issues.

## Objective 2: Compare Scholarship Recipients to Alabama Public School Students

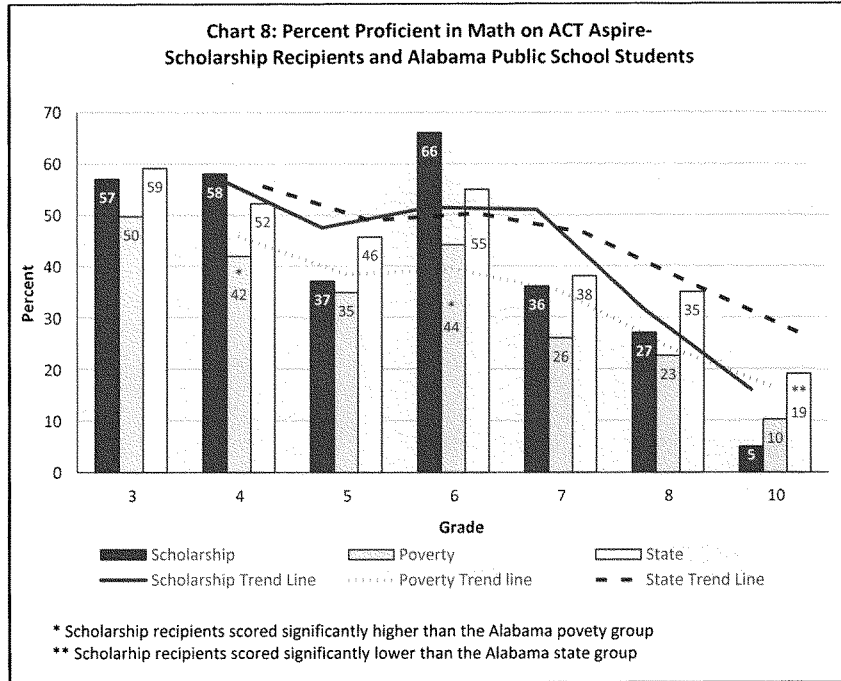
As in previous reports, the 2016-2017 scholarship recipients' performance on the ACT Aspire (grades 3 - 8 and 10) and the ACT college entrance exam (11<sup>th</sup> grade) are compared to the performance of Alabama public school students in general and Alabama public school students who receive reduced or free lunch (AL poverty). This comparison provides a snapshot of how the scholarship recipients perform in comparison to others in the state attending public schools without a scholarship.

As previously noted, the comparison between scholarship recipients and students attending public schools focuses on ACT Aspire proficiency scores due to the limited availability of ALSDE data. There are some significant limitations related to the interpretation of the results that must be noted. This small subsample of students, approximately 14% of scholarship students in the grades required to be tested, may not be representative of all of the participants in the AAA program. The relatively small number of scholarship students with ACT Aspire scores (331 in grades 3 - 8 and 10) and ACT college entrance exam scores (32 11<sup>th</sup> graders) represents only 30 (22%) of the 131 schools that students attended. There may be factors associated with the schools that used ACT Aspire and the ACT (as opposed to other tests such as the Iowa) that make these schools unrepresentative of the rest of the schools with scholarship recipients (e.g., demographic characteristics of students, class sizes, teacher quality, and pedagogical approaches). For example, the percentage of Hispanic students among those who took the Iowa test (18%) is twice the percentage among those who took the ACT Aspire (9%). With these limitations in mind, the comparisons that are set forth in the evaluation requirements for the AAA were made.

### Proficiency Rates of Scholarship Students Compared to Alabama Public School Students

#### **ACT Aspire**

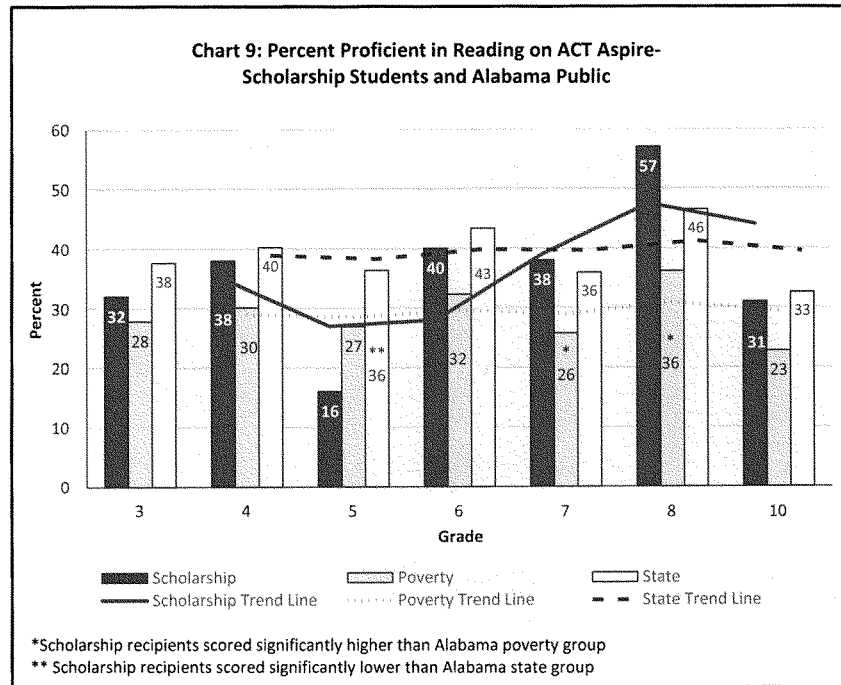
To compare scholarship students to public school students, a proficiency rate (percentage achieving at levels 3 and 4) was calculated for three groups of students for whom ACT Aspire scores were available: scholarship students, Alabama state poverty students (those receiving a free or reduced lunch subsidy) and all students in the state attending public schools. The percentage of children achieving proficiency at each grade level is represented graphically in Charts 8 (math) and 9 (reading). Table 4A in the Appendix shows the rates across all four proficiency groups. Small discrepancies between table and values in the charts that follow are due to rounding.) The poverty group provides the most appropriate comparison group, as nearly all scholarship recipients are eligible for the subsidy. Statistical analyses compared the proportion of scholarship recipients who achieved or exceeded proficiency at each grade level and subject area to the comparable scores for those who attended public schools. In Charts 8 and 9 asterisks within the bar for Alabama Poverty (\*) or State (\*\*) (which includes all demographic groups combined) indicates that there was a significant difference between the percentage of students who were proficient in that group compared to the scholarship recipients. The average moving trend lines are included in the charts to show the average change in percentile scores between each grade level for each comparison group. Average moving trend lines allow patterns in data to be visualized more clearly when there are fluctuations in the data. However, it is important to note that data presented at each grade level are from distinct groups of students and do not represent changes in individual students over time.



Comparing the scholarship recipients to Alabama public school students and the Alabama Poverty group revealed a mixed pattern of results that differed across the two subject areas. As reported in previous years, the percentage of students who are proficient in math decreased as grade level increased, regardless of scholarship status. As can be seen in Chart 8 by the 10<sup>th</sup> grade less than 20% of students are proficient in math across all three comparison groups. There were no significant differences between the scholarship students and the public school students for grades 3, 5, 7, and 8. However, in grades 4 and 6 the scholarship students' scores were significantly higher than the Alabama Poverty group (but not the state as a whole), and in the 10<sup>th</sup> grade, scholarship recipients were less proficient in math than their counterparts in the state as a whole.

With respect to 2016-2017 reading achievement, regardless of scholarship status, generally less than 50% of students in any group were proficient in reading (Chart 9). Eighth grade scholarship recipients were the exception to this generalization, with more than 50% of students meeting proficiency benchmarks for reading. There were no significant differences between the three groups for grades 3, 4, 6, and 10. In grades 7 and 8 scholarship recipients scored higher than the Alabama Poverty group, but not the state as a whole, scholarship students and in 5<sup>th</sup> grade scholarship recipients were significantly lower than 5<sup>th</sup> grade students in public schools for the state as a whole. It is important to note that there appear to be large differences between some of

the scores that are not listed as statistically significant. Given the small sample sizes and the variability in the scores, the statistical testing tells us that we cannot be certain that these differences are not an artifact of the samples, rather than a true difference that would generalize to all scholarship students.



**ACT**

For 11<sup>th</sup> graders taking the ACT, the ALSDE assessed college and career readiness by determining the percentage of students who met at least one benchmark in any subject area (English, math, reading, and science). For the state as a whole, approximately 50% met this standard for 2016-2017. This is comparable to the rate for the scholarship students, which was also 50%. However, it should be noted that science scores were not available for the scholarship students, so 50% may underestimate the number of students meeting this standard.

Additional data available from ACT provides the percentage of students meeting benchmarks for each state and the U.S. as a whole. ACT reports that the 2017 Alabama state-wide percentages of students meeting the benchmarks were 23% for math, 36% for reading, and 52% for English. For scholarship students the percentage of students meeting benchmarks for math (22%) and English (47%) were comparable, but the percentage making the reading benchmark (18%) was significantly lower than the Alabama-state-wide results. For all students in the U.S., 41% met the benchmark for math, 47% for reading, and 61% for English. These rates are statistically higher than those observed for the scholarship students for math and reading, but not English.

**Objective 2 Conclusion**

With a few exceptions noted above, comparisons between the scholarship students and the students attending public schools in Alabama generally indicate that the two groups continue to fall short of meeting the benchmarks on standardized tests. The strength of any conclusions for Objective 2 relies on how representative the students included in the analyses are of the larger group of scholarship recipients, and the small percentage of scholarship students included in this analysis is a concern. Additional issues have been presented with respect to unknown differences among schools that choose particular tests. Unfortunately, it is impossible to address these limitations and concerns adequately with the information available. As a result, the summary presented here is based on the best available information, but is inconclusive.

The comparisons at each grade level did not present a cohesive pattern. In some cases, scholarship students performed better than the Alabama poverty group (for math in 4<sup>th</sup> and 6<sup>th</sup> grades and for reading in 7<sup>th</sup> and 8<sup>th</sup> grades), but in other cases they performed significantly worse than the state as a whole (5<sup>th</sup> and 11<sup>th</sup> grade reading, and 10<sup>th</sup> grade math). Scholarship students in 11<sup>th</sup> grade taking the ACT were comparable to the Alabama public school students on most indicators, only differing from public school students in meeting reading benchmarks, where fewer scholarship students were proficient.

To summarize, for both groups of students, there were very few instances where the percentage of students reaching proficiency was 50% or higher, suggesting there is need for improvement in the state as a whole. It is noteworthy that in 25 out of the 34 (78%) comparisons made there was no significant difference between the scholarship recipients and students attending public schools in the state. In cases where differences were observed, no reliable patterns across grade levels and subject could be discerned. As a result, there is no compelling evidence to suggest that on the ACT Aspire and ACT tests the scholarship students perform better or worse than public school children in Alabama.

**Summary for Objective 2: Scholarship Recipients vs. Alabama Public School Students**

- Comparisons did not present a clear pattern across subjects and grade levels indicating that one group performed better or worse than the other.
- Scholarship students in 11<sup>th</sup> grade generally performed similarly to their public school counterparts.

**ACT Aspire findings for each grade level**

- ✓ For **math**, in grades **4** and **6** the scholarship students' scores were significantly **higher** than the **Alabama Poverty** group, and in **10<sup>th</sup>** grade, scholarship recipients were **less proficient** in math than their counterparts **in the state as a whole**. For **all other grades** there were **no differences** in math in achievement.
- ✓ For **reading**, in grades **7** and **8** scholarship recipients scored **higher** than the **Alabama Poverty** group, and in **5<sup>th</sup>** grade scholarship recipients were significantly **lower** than their counterparts in public schools for the **state as a whole**. There were **no significant differences** in any other grade.

**ACT findings for 11<sup>th</sup> graders**

- ✓ Scholarship students in **11<sup>th</sup>** grade taking the ACT differed from public school students in meeting **reading** benchmarks, where **fewer scholarship students were proficient**, but they were **on par** with public school students on **other indicators**.



### Objective 3: Changes in Achievement across Time

The third objective of this report addresses the question as to whether participation in the scholarship program over time results in achievement score changes that meet, exceed, or fall behind those of students attending public schools. Several approaches were taken to assess how the scholarship students' scores changed over time and how that change compares to students attending public schools. Ideally, such an analysis would calculate the average change in national percentile scores or proficiency groups over time for scholarship students and public school students, and then comparisons would be made between the two groups of students taking into account grade level. This approach met with two obstacles. First, very few scholarship students have test scores across three time points that can be compared. This is largely due to missing test scores in the 2014-2015 academic year resulting from failures to report scores or students being in grades for which reporting was not required (e.g., K-2). Additionally, an individual student may not have taken the same standardized test each year (due to schools changing tests and students changing schools, especially from 8<sup>th</sup> grade into high school). A greater proportion of students can be compared over a two-year period and this approach was taken in some of the analyses below. A second issue is that changes can only be observed as state-wide gains or losses over academic years with the ALSDE data, which may obscure the actual amount of change occurring for individual students. For example, if proficiency rates remain constant from year to year, it is not clear whether that is due to there being no changes in individual student scores or if instead that the percentage of students who gained in proficiency was off-set by a similar percentage who dropped in proficiency. With no other viable alternative, for the ALSDE data, only change in proficiency rates between consecutive two-year periods can be observed and this was used in this report.

With these limitations in mind, three strategies were used to examine change over time.

- The first approach examined the relationship between the number of years a student had received a scholarship and their achievement test scores for the 2016-2017 academic year. This analysis includes the greatest number of scholarship students and test types, but it does not reveal the amount of change over time, only the direction of change.
- A second approach compared student performance across pairs of adjacent years for the three achievement tests in which there were sufficient numbers of students. These analyses examined how percentile scores in each of the subject areas changed on average for each student, taking into account their grade level, and can reveal if the amount of change was significant. For example, this analysis can reveal if the average 3<sup>rd</sup> grader who took the Iowa Test in the 2015-2016 academic year improved significantly in 4<sup>th</sup> grade for the 2016-2017 academic year. Although this approach includes a significant proportion of the scholarship students, it still excludes a number of students with missing test scores or who did not take the same test in consecutive years.
- The final approach focuses on changes in the ACT Aspire proficiency status in grades 3 - 8 because these scores can be directly compared to the results for Alabama public school students who also took the ACT Aspire. Conclusions from these comparisons, however, must be regarded with the caveat that scholarship students who took the ACT Aspire may not be representative of the scholarship students who took other tests. In addition, because 9<sup>th</sup> grade

students were not required to take the ACT Aspire, and because students did not generally take the same tests in 10<sup>th</sup> and 11<sup>th</sup> grade, high school students could not be included in this analysis.

#### Correlations between 2016-2017 Test Performance and Number of Years Receiving a Scholarship

Correlation analysis was used to infer a relationship between performance on the 2016-2017 achievement tests and the number of years receiving a scholarship. This analysis included all students who took one of the seven tests included in the report for Objective 1. Correlations were calculated between number of years a student had received a scholarship and their scores in math, reading, and English/language arts. A significant positive correlation would indicate that scholarship students' performance was higher the longer they were in the program, but a negative correlation would indicate that their achievement was lower the longer they were in the program. Non-significant correlations would suggest that there is no relationship between achievement test scores and the number of years a student had received a scholarship. Out of the 24 correlations calculated, only one was significant: math percentile scores on the PSAT/NMSQT were negatively correlated with the number of years receiving a scholarship ( $r = -0.25$ ), suggesting that poorer performance was associated with being enrolled in the scholarship program over time. It should be noted that correlation does not mean causation. Given the data available, it cannot be determined whether performance on the PSAT/NMSQT is a result of receiving a scholarship or some other factor. More importantly, the overall majority of the correlation findings suggest that there is no relationship between performance on standardized tests and the number of years a student had received a scholarship.

#### Changes in Percentile Scores 2015-2016 vs 2016-2017

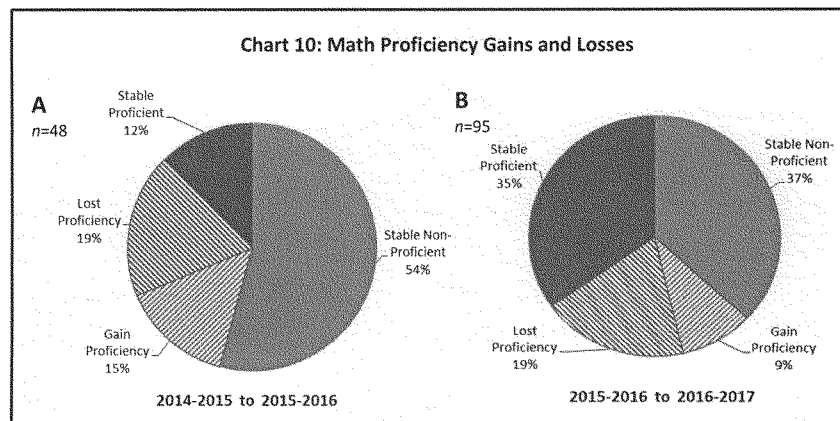
Comparisons were made between students' percentile scores for the 2015-2016 academic year and their scores for the 2016-2017 academic year for those who took the ACT Aspire, Iowa Test, Stanford-2002 norms, and Stanford-2007 norms. These were the only achievement tests with sufficient numbers of students to make a comparison across these years. As stated previously, there was a large amount of missing data in 2014-2015. A paired *t*-test was used to compare the percentile scores in English/language arts, math, and reading.

Overall, the results indicated no significant differences in percentile scores between 2015-2016 and 2016-2017, except in math and English on the Stanford-2002. In this case there was a significant decline in performance over time. It should be repeated that only a small proportion of the scholarship students are represented in the Stanford-2002 analyses and the results should not be generalized to all scholarship recipients. Across all four achievement tests, only two of the 12 comparisons made revealed a significant decrease in scores, so the broader pattern suggests that there was no significant change in scores from one year to the next.

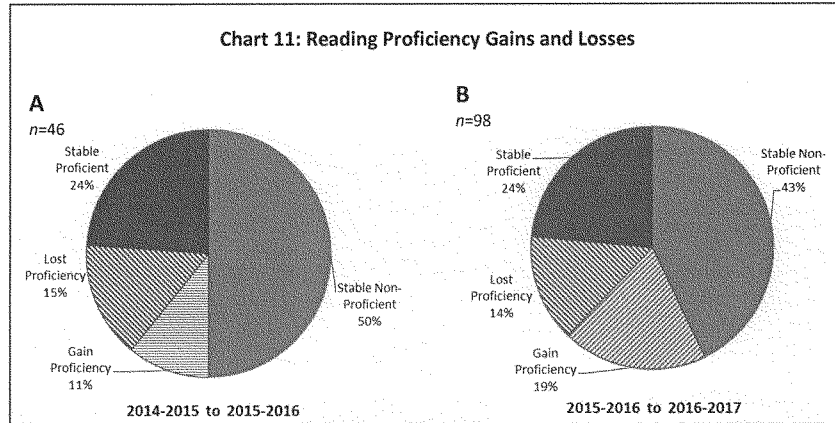
## Changes in ACT Aspire Proficiency

Change in proficiency status was examined across two sets of adjacent academic years 2014-2015 to 2015-2016 and 2015-2016 to 2016-2017. Within these time periods each student was placed into one of four groups for each subject area: Stable Proficient, Stable Non-Proficient, Gained Proficiency, and Lost Proficiency. Charts 10 and 11 below graphically represent these groups for math and reading. In each of these charts, the solid red and black pie pieces represent the percentage of students whose proficiency status did not change, with red indicating that they remained non-proficient and black indicating that they remained proficient. The striped pie slices indicate students whose proficiency status changed, with red stripes indicating a move from non-proficient to proficient (Gained Proficiency) and black stripes indicating a change from proficient to non-proficient (Lost Proficiency).

Considering math first, Charts 10A and 10B indicate that the majority of students did not change proficiency status (combined solid red and black), regardless of where they were classified in the previous year (66% in Chart 10A and 72% in Chart 10B). For the 2014-2015 academic year (Chart 10A) a larger number of students declined in their performance (19% - black stripes) than improved (15% - red stripes) into the next academic year. Chart 10B shows a similar trend for changes from 2015-2016 to 2016-2017 in that fewer students improved (9% - red stripes) than declined (19% - black stripes).



For reading, a very similar pattern is observed. Charts 11A and 11B indicate that the majority of students did not change their proficiency status over time. In Chart 11A the percentage who lost proficiency (15% - black stripes) was greater than those who gained proficiency (11% - red stripes). The opposite pattern is seen in changes from 2015-2016 to 2016-2017, in that more students improved (19% red stripes) than declined (14%, black stripes).



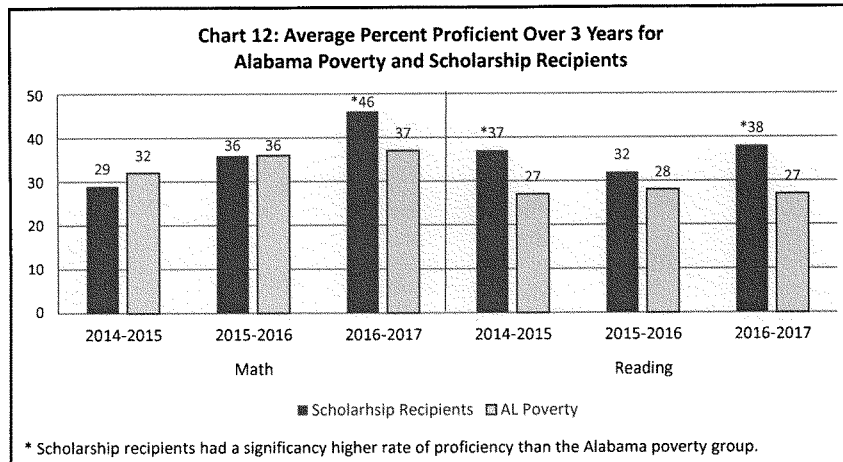
Considering the patterns across both subject areas, the majority of students who were categorized as non-proficient one year, remained non-proficient the following year. However, a positive sign is that for the most recent comparison years, more students gained proficiency in reading than lost it. It is important to recall that this is only a subsample of the larger population of students who took the ACT Aspire in 2016-2017. The proficiency rates for this larger group including all grade levels was 46% for math and 38% for reading. Thus, the improvements suggested in these charts must be placed in the context that the majority of students in 2016-2017 were not rated as proficient in either subject area. As more data are collected among the scholarship students in the coming years a clearer picture will emerge as to the likelihood of improvement over time.

As noted earlier, ALSDE does not provide data that permits a similar analysis for students attending public schools. However, year-to-year state-wide changes in proficiency rates can provide an assessment of overall change in public school children's performance. The Alabama poverty group is most similar to the scholarship students, and this group is the focus of this summary. Chart 12 shows the average percentage of students (grades 3 - 8) meeting proficiency benchmarks in math and reading for the poverty group. Comparable data are included for scholarship recipients for each of the three academic years that were included in this report. It is important to note that the data previously presented in Charts 10 and 11 (*n*'s range from 46 to 98) only represent scholarship recipients who had ACT Aspire test scores for *two consecutive years*, and this excludes many students. Chart 12 compiles the scholarship students' proficiency rates for each academic year, and represents all scholarship students in grades 3 - 8 with ACT Aspire scores each year (*n*'s range from 122 to 286).

For the poverty group there was a four percentage point increase in math proficient students over the first two years presented, but all other proficiency rates were within 1 percentage point each year. This suggests that generally the achievement rate of the State poverty sample was stable over time. This analysis should not be interpreted as suggesting that individual children do not move from non-proficient to proficient or vice versa over academic years. Instead Chart 12 indicates that

if individual children in the poverty sample move from non-proficient to proficient, at the state level this improvement is offset by a similar number of children changing in the opposite direction.

In comparison, for the scholarship students, the percentage of students who were proficient in math for the 2016-2017 academic year was significantly higher than the percentages in 2014-2015 and 2015-2016, but there was no significant change from 2014-2015 to 2015-2016. There were also no significant changes in proficiency rates for reading. Overall, compared to Alabama poverty group, scholarship recipients' math scores seem to be going up during the years being compared, but reading scores do not show a consistent trend of improvement. A comparison of proficiency rates between the Alabama poverty and scholarship recipient students for each year revealed that scholarship recipients had a statistically significant higher proficiency rate than Alabama poverty students for both math and reading for the 2016-2017 academic year, consistent with findings reported for Objective 2. Scholarship recipients also had higher reading proficiency rates for the 2014-2015 academic year. Although these are positive findings for the AAA program, these comparisons need to be put in context of the low levels of proficiency for both groups of students across all years.



## Objective 3 Conclusions

Overall, the results indicate that over time participating in the scholarship program does not, on average, yield a significant improvement on standardized tests scores. Generally, the number of years that a student participated in the scholarship program was not correlated with achievement performance. Results indicated that for the majority of scholarship recipients there was no gain or loss in percentile scores on the ACT Aspire, Iowa Test of Basic Skills, and Stanford. On the ACT Aspire students were more likely to remain in a non-proficient category than to improve. While proficiency rates are typically well below 50%, there is some evidence that in the most recent year of this report, that scholarship students collectively improved in proficiency rates in math on the ACT Aspire. In 2016-2017, they also had a higher rate of proficiency in math and reading on the ACT Aspire compared to the Alabama poverty students. However, this group of scholarship recipients is only a small percentage of the larger group of participants in the AAA. The more consistent pattern across all scholarship students is a lack of change over time in achievement. This general lack of change over time follows the same pattern seen in public school students in Alabama and is likely not attributable solely to the scholarship program. It is important to be reminded that the analyses conducted for this objective assess patterns of change for the group as a whole. There are no doubt children who improve in their achievement over time in both the scholarship program and the Alabama public school system. However, the findings of this report suggest that the proportion of children who improve maybe offset by a comparable proportion who decline. The objective of this report is to summarize the patterns for the group as a whole, and these patterns do not indicate that as a group students' achievement test scores significantly improve or decline as they move through school.

Summary for Objective 3: Changes in Achievement across Time	
•	On average, over time, participating in the scholarship program was not associated with significant improvement on standardized tests scores.
•	The lack of change over time followed the same pattern seen in public school students in Alabama and is likely not attributable to participation in the scholarship program.
✓	The number of years that a student participated in the scholarship program was <i>not</i> correlated with higher achievement test scores.
✓	For the majority of scholarship recipients there was no gain or loss in percentile scores on the ACT Aspire, Iowa Test of Basic Skills, and Stanford 2007 norms. Scores on the Stanford 2002 declined for math and English.
✓	On the ACT Aspire students were more likely to remain in a non-proficient category than to improve. However proficiency rates for 2016-2017 were higher than those of Alabama poverty students.

- On average, over time, participating in the scholarship program was not associated with significant improvement on standardized tests scores.
- The lack of change over time followed the same pattern seen in public school students in Alabama and is likely not attributable to participation in the scholarship program.
- ✓ The number of years that a student participated in the scholarship program was *not* correlated with higher achievement test scores.
- ✓ For the majority of scholarship recipients there was no gain or loss in percentile scores on the ACT Aspire, Iowa Test of Basic Skills, and Stanford 2007 norms. Scores on the Stanford 2002 declined for math and English.
- ✓ On the ACT Aspire students were more likely to remain in a non-proficient category than to improve. However proficiency rates for 2016-2017 were higher than those of Alabama poverty students.

## General Conclusion

The purpose of the evaluation is to assess how the scholarship program enacted through the AAA affects the academic achievement of students in the program. Throughout the report many concerns have been voiced about the reliability and validity of the findings due to unknown factors associated with missing achievement tests and due to issues related to subsamples included in specific comparisons, such as whether a subsample of students accurately represented the larger group of scholarship students. Within these limitations, the report made use of the available information to describe how well the scholarship recipients in the 2016-2017 academic year performed. The evaluation addressed three objectives to reach this goal:

- The first objective described the achievement test results of the scholarship recipients and revealed that generally these students did not perform as well as other students in the U.S. Other indicators, such as the NAEP assessments, are consistent with these results, finding that students in the state of Alabama do not perform as well as students elsewhere in the country.
- When compared to Alabama public school students on ACT Aspire and ACT scores in Objective 2, there was no consistent pattern indicating that one group performed better or worse across grade levels. Only a small percentage of students took the ACT Aspire or the ACT, which hampers the ability of this report to draw definitive conclusions.
- Finally, the evaluation assessed if scholarship recipients' achievement scores improved, declined or remained the same over time. Similar to their public school counterparts, findings suggested that, on average, scores showed little improvement over time.

## Limitations

The types of descriptive analysis found in this report will always have shortcomings in that they do not control for the litany of possible confounding differences among students and the schools they attend. This includes potential differences in test or grade samples, many of which have already been discussed, such as different compositions of race, household income, or number of years receiving a scholarship. The inability to control for these factors is largely due to limitations in the information/data that is available.

Creating an accurate model of the effects of the scholarship program would require statewide, student-level testing results that are linked to a student's demographic information. The most meaningful comparison between scholarship recipients and public school students would compare scholarship students' performance to the performance of students in the public school for which they were zoned, rather than aggregating across all schools in the state. Unfortunately, the state does not receive the student-level testing results needed for this approach. Gathering such information for each individual student would be time intensive and costly.

Drawing conclusions regarding the academic achievement of scholarship recipients relative to students attending public schools in no small part depends on the number of schools with scholarship recipients that use tests that are utilized by ALSDE in the future. ALSDE discontinued the use of the ACT Aspire for the 2017-2018 academic year, and there may be an additional test change in the 2018-2019 academic year. This will further constrain comparisons between

scholarship recipients and students attending Alabama public schools and to make comparisons over time.

Finally, it is important to reiterate that the use of proficiency scores to discern differences in student performance may not be sensitive to meaningful changes in performance. Proficiency scores reduce test scores to four-point scales, and change in performance is only registered when students transition from one group to the next. From a policy perspective, a considerably smaller change in scores could be considered significant. Additionally, students who are closest to the cutoff scores are more likely to change proficiency groups, entailing that a relatively small number of students can have a disproportionate impact on the results. A better understanding of student academic gains could be achieved by either using student-level testing results, or by knowing the means and other statistical information for test scores across demographic groups.

### Comparison to Previous Reports

The students in the AAA program belong to demographic groups (low income, racial minority groups) that have lagged behind other students in the state and the U.S. in academic achievement. Thus, even the most effective interventions might be challenged to show dramatic improvements in a short period of time. A common theme across the three annual reports to date is that scholarship students, similar to their public school counterparts, often lag behind their peers in the country. This is the first year that change in achievement performance over time was assessed, and results indicated that, on average, achievement test scores are fairly stable among scholarship students similar the state as a whole. In the upcoming years, analyses will evaluate if these trends continue.



## Glossary of Terms

*ACT Readiness Benchmark Scores.* Achieving a score that meets or exceeds the benchmark scores indicates that a student has a high probability of future success in first-year college courses. There are four readiness groups (*in need of support, close, ready, and exceeding*) that correspond to a range of scale scores that are unique to each grade level.

*Criterion-referenced test.* These tests assess students' learning against a fixed set of predetermined learning standards that are set for their grade level. In an ideal school, every student would meet the criterion score for their grade level.

*Mean.* A mean test score is calculated by adding together every test score in a group and dividing by the number of people in the group. It is one way to represent the score of a typical person in the group.

*National percentile.* National percentile scores can range from 1 - 99. The percentile rank indicates the percent of students nationwide who scored lower than a particular raw score on the same test at the time the norms were compiled.

*Norm-referenced test.* These tests are designed to compare student achievement relative to others at a particular grade level with the goal of distinguishing between high and low achievers. National percentile scores are commonly used as a reference point for these tests, with the 50<sup>th</sup> percentile indicating the score achieved by the average student in the U.S.

*Proficiency Scores/Groups.* For the state of Alabama, proficiency scores correspond to the ACT readiness benchmarks defined above.

*Raw score.* A raw score is the number of items that a child answered correctly on a test.

*Scale(d) score.* A scaled score is a mathematical transformation of a raw score. Scaling provides a continuous metric across the different forms and levels of a test (such as tests for different grade levels). Higher scale scores indicate higher levels of academic achievement.

*Scholarship Granting Organization (SGO).* An organization that provides educational scholarships to eligible students attending qualifying schools. SGOs receive donations from individuals and corporations (subject to limitations imposed by the Alabama Accountability Act), which are then distributed in the form of scholarships to eligible students. Donations by taxpayers cannot be restricted or conditional with respect to how the donation is applied to scholarship recipients or schools.

*Statistically significant difference.* The difference between two scores is considered significantly different when there is a low probability (usually less than a 5% chance) that the difference could occur by chance. When a statistically significant difference is observed between the mean scores of two groups of students, it suggests that the difference is likely to be a "real" difference.

Appendix

Table 1A: Mean Stanford Achievement Test Scores for Grades 3 - 8 (2007 Norms)							
Grade	Group (N)	Math		Reading		Language	
		Scale Score	Percentile	Scale Score	Percentile	Scale Score	Percentile
3	All (49-52)	610	41	616	32	613	33
	AA/Black (34-37)	609	39	614	30	608	29
	Female (29-30)	612	43	620	36	621	41
	Male (<25)	*	*	*	*	*	*
4	All (46-47)	608	29	624	30	622	36
	AA/Black (30-31)	605	27	621	29	623	37
	Female (<25)	*	*	*	*	*	*
	Male (27-28)	604	26	620	28	612	28
5	All (36-38)	631	27	635	24	627	25
	AA/Black (25-27)	624	20	626	17	617	18
	Female (<25)	*	*	*	*	*	*
	Male (<25)	*	*	*	*	*	*
6	All (45)	654	37	654	31	642	30
	AA/Black (31)	644	28	646	23	637	25
	Female (20-22)	*	*	*	*	*	*
	Male (≤25)	*	*	*	*	641	29
7	All (56-58)	656	28	655	23	647	28
	AA/Black (39-41)	649	21	645	16	641	23
	Female (26-27)	652	24	646	16	648	29
	Male (30-32)	660	32	663	31	645	27
8	All (67-69)	667	32	667	27	650	27
	AA/Black (52-54)	662	26	662	22	645	23
	Female (35-36)	673	37	676	36	665	38
	Male (32)	660	24	658	19	633	15

\* Indicates an insufficient number of students in the group (<25) for reporting.

Grade	Group (N)	Math Percentile	Reading Percentile	English Percentile
3	All ( 194-196)	45	43	47
	Black (98-99)	33	35	39
	Hispanic (36)	62	42	49
	White (45-46)	55	58	61
	Male (90-93)	45	42	44
	Female (103-104)	44	44	49
4	All (166-171)	38	41	46
	Black (88-91)	28	33	38
	Hispanic (33)	45	46	50
	White (30-32)	51	55	62
	Male (94-98)	36	39	42
	Female (72-73)	40	44	52
5	All ( 130-136)	38	40	44
	Black (67-73)	27	33	35
	Hispanic (30)	51	47	48
	White (< 25)	*	*	*
	Male (56-60)	37	38	39
	Female (74-76)	38	42	48
6	All ( 149-151)	31	37	41
	Black (86-87)	24	30	32
	Hispanic (31)	32	35	40
	White (< 25)	*	*	*
	Male (86)	32	38	40
	Female (63-65)	29	35	41
7	All (157-162)	32	37	39
	Black (96-101)	27	33	33
	Hispanic (29)	39	33	37
	White (< 25)	*	*	*
	Male (69-72)	33	36	35
	Female (88-90)	32	37	42
8	All (174-181)	36	43	43
	Black (109-111)	28	37	36
	Hispanic (21-23)	*	*	*
	White (27-30)	47	57	59
	Male (94-95)	37	42	42
	Female (80-86)	35	43	44

\* Indicates an insufficient number of students in the group (< 25) for reporting.

Grades	Group (N)	Math Proficiency Groups				Reading Proficiency Groups				English Proficiency Groups			
		1	2	3	4	1	2	3	4	1	2	3	4
3	All (54 )	9	33	46	11	39	30	21	11	4	21	37	39
	Black (40)	10	33	45	13	38	30	23	10	3	13	45	40
	Female (31)	10	36	42	13	39	29	16	16	3	13	45	39
4	All (39-40)	8	35	50	8	15	48	25	13	5	13	39	44
	Black (27)	11	33	44	11	19	52	19	11	7	19	33	41
	Female (*)	*	*	*	*	*	*	*	*	*	*	*	*
5	All (37-38)	13	50	29	8	26	58	16	0	0	32	32	35
	Black (*)	*	*	*	*	*	*	*	*	*	*	*	*
	Female (26-27)	15	48	26	11	22	59	19	0	0	31	27	42
6	All (37-40)	3	33	33	30	23	38	30	10	3	16	35	46
	Black (*)	*	*	*	*	*	*	*	*	*	*	*	*
	Female (28)	4	29	39	29	14	39	39	7	0	12	42	46
7	All (54-57)	21	44	25	11	18	44	38	0	2	13	41	45
	Black (32)	13	53	16	19	16	41	44	0	0	16	47	37
	Female (35)	26	46	26	3	18	46	36	0	3	12	36	49
8	All (54-57)	32	40	20	7	16	28	46	11	0	8	35	58
	Black (27-28)	39	39	14	7	25	29	39	7	4	4	48	44
	Female (33)	37	36	15	12	18	36	30	15	3	6	39	52
10	All (39-43 )	71	24	5	0	40	30	26	5	14	33	33	21
	Black (26-29)	79	21	0	0	48	17	31	3	17	38	27	17
	Female (<25)	*	*	*	*	32	32	32	4	4	28	40	28

\* Indicates an insufficient number of students in the group (<25) for reporting.  
Proficiency Groups: 1--*In need of support*, 2--*Close*, 3--*Ready*, and 4--*Exceeding*

Grade/ Group	Math Proficiency				Reading Proficiency			
	1 Needs Support	2 Close	3 Ready	4 Exceeds	1 Needs Support	2 Close	3 Ready	4 Exceeds
3 <sup>rd</sup> Grade (54) Scholarship	9	33	46	11	39	30	21	11
AL Poverty	19	31	36	13	47	25	17	11
AL State	15	26	38	21	39	24	21	17
4 <sup>th</sup> Grade (39-40) Scholarship	8	35	50	8	15	48	25	13
AL Poverty	11	47	34	8	37	33	21	9
AL State	9	39	37	15	29	31	25	15
5 <sup>th</sup> Grade (37-38) Scholarship	13	50	29	8	26	58	16	0
AL Poverty	13	52	28	7	43	30	17	10
AL State	10	44	32	13	35	29	21	15
6 <sup>th</sup> Grade (37-40) Scholarship	3	33	33	30	23	38	30	10
AL Poverty	14	42	31	13	41	27	20	13
AL State	10	35	32	23	32	24	23	21
7 <sup>th</sup> Grade (54-57) Scholarship	21	44	25	11	18	44	38	0
AL Poverty	37	37	18	8	42	33	22	4
AL State	29	33	22	16	33	31	28	8
8 <sup>th</sup> Grade (54-57) Scholarship	32	40	20	7	16	28	46	11
AL Poverty	48	30	14	8	33	30	27	9
AL State	36	29	18	17	26	28	31	15
10 <sup>th</sup> Grade (39-43) Scholarship	71	24	5	0	40	30	26	5
AL Poverty	76	14	7	3	54	23	19	4
AL State	63	17	12	8	44	24	25	8

Percentages within a category may sum to a total slightly different from 100 due to rounding.

[Additional submissions by Ms. Hayes follow:]

DELIBERATIVE



**MEMORANDUM**

DATE : July 16, 2018  
TO : Kent Talbert  
Senior Advisor, Office of the Deputy Secretary  
FROM : Jason Botel  
Principal Deputy Assistant Secretary , Office of Elementary and Secondary  
Education  
SUBJECT : Determine Options for the Allowable Use of Funds for School Safety Measures  
Under Title IV, Part A

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**Issue**

The purpose of this memorandum is to help determine the actions and next steps to communicate to States, given questions we have received, about the allowable uses of program funds to support school safety measures, specifically related to the purchase of firearms for school personnel, including teachers; the training of school personnel, including teachers, in the use of firearms to protect students; and whether a State may direct how its local educational agencies (LEAs) use funds under Title IV, Part A of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA).

There are two specific questions for consideration:

- May Title IV, Part A funds be used to purchase firearms for school staff or train school staff to use firearms?
- May an SEA direct its LEAs to use all their Title IV, Part A funds on school safety measures?

**Background**

In recent months, the Department of Education (Department) has received questions regarding the use of Title IV, Part A funds to purchase firearms for school staff and to train school staff in the use of firearms. Additionally, the Governor of Texas, following the shooting in Santa Fe, TX, on May 18, 2018, requested that its State educational agency (SEA) direct its LEAs to spend any increase in Title IV, Part A funds on school safety measures.

## DELIBERATIVE

Title IV, Part A of the ESEA is the Student Support and Academic Enrichment (SSAE) grant program. The SSAE program is a flexible formula grant program administered by the SEA.<sup>1</sup> The SSAE program is intended to improve students' academic achievement by increasing the capacity of SEAs, LEAs and local communities to:

- (1) provide all students with access to a well-rounded education (section 4107);
- (2) improve school conditions for student learning (section 4108); and
- (3) improve the use of technology to improve the academic achievement and digital literacy of all students (section 4109).<sup>2</sup>

An LEA that receives at least \$30,000<sup>3</sup> in Title IV, Part A program funds must spend the funds in the three content areas above consistent with its local needs assessment and within the following parameters, as required by ESEA section 4106(e)(2)(C)-(E):

- C. at least 20 percent of the funds must be used for activities to support well-rounded educational opportunities (ESEA section 4107);
- D. at least 20 percent of the funds must be used for activities to support safe and healthy students (ESEA section 4108); and
- E. a portion of the funds must be used for activities to support effective use of technology (ESEA section 4109).

Further, section 4106(c)(1) provides that during the design and development of its application, an LEA or consortium of LEAs must engage in consultation with certain stakeholders. Specifically, LEAs and consortia of LEAs must develop their SSAE applications through "consultation with parents, teachers, principals, other school leaders, specialized instructional support personnel, students, community-based organizations, local government representatives (which may include a local law enforcement agency, local juvenile court, local child welfare agency, or local public housing agency), Indian tribes or tribal organizations that may be located in the region served by the local educational agency (where applicable), charter school teachers, principals, and other school leaders (if such agency or consortium of such agencies supports charter schools), and others with relevant and demonstrated expertise in programs and activities designed to meet the [purposes of the SSAE program]."

<sup>1</sup> SSAE was first funded in FY 2017. In FY 2017, the program received \$400 million. In FY 2018, the amount was slightly over \$1.1 billion. In 2017 only, Congress authorized States to award subgrants to LEAs using a competitive process and/or the statutory formula. Eight states (IN, MN, NE, NW, NH, NY, OK and UT) used this one-time opportunity.

<sup>2</sup> States must subgrant at least 95% of their allotment to LEAs. The State may reserve no more than 1% for administrative costs. At least 4% may be used for State-wide activities, including monitoring, training, technical assistance and capacity building for LEAs receiving SSAE subgrants.

<sup>3</sup> In the 2018 Consolidated Appropriations Act, there was an increase in the Title IV, Part A funding (approximately \$1.1 billion) provided. There will be considerably fewer LEAs to receive allocations less than \$30,000.



## DELIBERATIVE

The SEA's determination about what constitutes an allowable use of SSAE funds depends on a number of factors, starting with whether all statutory requirements are met. In addition to ensuring that proposed activities are informed by a comprehensive needs assessment and stakeholder engagement, as noted above, (ESEA sections 4106(d) and 4106(c)(1)), an SEA will consider whether a proposed activity is consistent with the purposes of at least one of the three content areas in the SSAE program (well-rounded education in section 4107, safe and healthy students in section 4108 or the effective use of technology in section 4109).

Indeed, SSAE program funds may be used to help make schools safer and more supportive for students and school communities. Title IV, Part A authorizes activities in the three aforementioned areas, one of which includes the improvement of school conditions for student learning, but is not limited to school safety measures like comprehensive school mental health, violence prevention and training on trauma-informed practices.

Assuming that the activity is consistent with the purposes of one of the above three content areas, as applicable, the SEA must make further determinations as to allowable costs in accordance with the cost principles in the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Uniform Guidance) at 2 CFR Part 200, Subpart E. The cost of an activity is allowable under the SSAE program if it is reasonable and necessary for performance of the grant (i.e., it is of a type generally recognized as ordinary and necessary for operation of the grant) and allocable to the grant (i.e., it is chargeable to the grant award in proportion to the benefits received as a result of the cost).

Also, because section 4110 of the ESEA prohibits supplanting, the proposed use of funds for the activity must supplement, and not supplant, other State or local funds that would otherwise be used to pay for the allowable activity.

Finally, SEAs must check to ensure that the activity is not one of the prohibited activities in section 4001(b) or section 8526 of the ESEA, as amended by ESSA. If the SEA determines a safety measure is an allowable activity consistent with these processes and considerations, it is allowable.

When all statutory requirements are met and safety is an identified need, the flexibility of this program lends itself to many potential ways to address school safety. It is conceivable that funds may be used to make improvements to the physical facility provided such improvements meet the definition of "minor remodeling;" as construction is a prohibited use of funds. Funds may, conceivably, also be used to make technological changes to a school to prevent intruders from entering the school, to ensure students and school personnel may safely enter the school building and exit during an emergency or to protect the life and well-being of students and school personnel.

## DELIBERATIVE

**Question 1: May Title IV, Part A funds be used to purchase firearms for school staff or train school staff to use firearms?****Analysis for Question 1:***Statutory Analysis*

The statute provides LEAs with considerable flexibility and discretion in the use of funds and permits LEAs to use those funds, under the safe and healthy student content area, for “other programs and activities” not expressly authorized. The statute neither clearly authorizes nor prohibits the purchase of firearms or firearms training. Further there is nothing relevant in the legislative history on the issue of whether Title IV, Part A funds could be used for firearms or firearm training. However the definition of “drug and violence prevention” for the Title IV, Part A program references “the creation and maintenance of a school environment that is free of weapons.” (ESEA section 4102(5)(B))<sup>4</sup>

Arguments can be made for and against permitting the use of Title IV, Part A funds for purposes such as firearms for school staff and training for school staff on firearm use. The Department’s Office of the General Counsel has advised that the Secretary has discretion to interpret the broad language of the statute as to its permissiveness regarding the purchase of firearms and training on the use of firearms.

*Other Federal Programs*

While Title IV, Part A is silent on whether firearms are specifically allowable or prohibited, there is precedent within the Federal government for categorizing the purchase of weapons, ammunition or weapons training as unique items of cost that may be analyzed and treated differently than other types of costs. It is the longstanding policy position of the Federal Emergency Management Agency (FEMA) and the U.S. Department of Justice (DOJ) that

<sup>4</sup> Definition of “drug and violence prevention” in sec. 4102(5)(B) for the Title IV, A program:

(5) DRUG AND VIOLENCE PREVENTION.—The term “drug and violence prevention” means— ... (B) with respect to violence, the promotion of school safety, such that students and school personnel are free from violent and disruptive acts, including sexual harassment and abuse, and victimization associated with prejudice and intolerance, on school premises, going to and from school, and at school-sponsored activities, **through the creation and maintenance of a school environment that is free of weapons** and fosters individual responsibility and respect for the rights of others.

OGC does not believe this language is intended to preclude all firearms in schools, but rather that it is about preventing unauthorized individuals (primarily students) from having weapons in the school environment. In 2013, the Department along with the Departments of Homeland Security, Justice, Health and Human Services, the Federal Emergency Management Agency, and the Federal Bureau of Investigation issued the “GUIDE FOR DEVELOPING HIGH-QUALITY SCHOOL EMERGENCY OPERATIONS PLANS,” which recommends that “the possibility of an *active shooter* situation is not justification for the presence of firearms on campus in the hands of any personnel other than law enforcement officers.” This guidance which is still on the Department’s website may have been considered when Congress drafted the definition of “drug and violence prevention.”

## DELIBERATIVE

weapons and ammunition are not allowable under the Homeland Security Grant programs or predecessor programs (prior to 2003). The Homeland Security Grant programs, authorized by Section 2008 of the Homeland Security Act (HSA), include a broad program authorization available for “enhancing school preparedness,” with flexible and open-ended uses of funds.<sup>5</sup> There is not an express statutory basis for FEMA’s (and previously DOJ’s) prohibition on the purchase of weapons or ammunition, as the statutory language is quite broad. Rather, it is understood that the prohibition on weapons or ammunition is a policy position based on the reasoning that State and local governments should cover the costs associated with weapons and ammunition for its personnel, including law enforcement personnel, and that the Homeland Security Grant programs should fund more specialized preparedness purposes.<sup>6</sup>

*Congressional Intent*

There is no evidence that Congress contemplated the use of Title IV, Part A funds for firearms or firearms training when it passed ESSA. However, when addressing this specific issue for the first time since the passage of ESSA in the context of a school violence prevention program that includes training for school personnel and law enforcement, the “STOP School Violence Act” (Pub.L. 115–141), Congress included a rule of construction that prohibits the use of grant funds for the purpose of purchasing firearms or training in the use of firearms. Additionally, Senator Lamar Alexander, Chairman of the Senate Health, Education, Labor, and Pensions (HELP) Committee, told the Associated Press in March 2018 that he is not supportive of arming teachers.<sup>7</sup>

*Broader Public Policy Debate regarding Guns*

More broadly, there are important public policy considerations with respect to federal funding enabling the purchase, training, and potential use of firearms in school by school staff. The issue of firearms in the United States is polarizing, involving flashpoints such as Constitutional rights, safety, and deterrence. A March 2018 Gallup poll<sup>8</sup> indicated 67% of Americans favor stricter laws controlling the sale of firearms, the highest percentage registered since 1997 and a 20-point

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<sup>5</sup> Section 2008 of the Homeland Security Act of 2002 (HSA), as amended, authorized uses of FEMA grant funds for counterterrorist activities including, but not limited to, purchasing and maintaining equipment, protecting critical infrastructure, **enhancing school preparedness**, and “any other appropriate activity, as determined by [FEMA].” Despite the broad statutory language in HSA, FEMA’s most recent guidance, issued November 1, 2017, reiterated its determination that weapons of any kind and ammunition are unallowable expenses under the grant program. Here is a link to the guidance (FEMA Grant Programs Directorate Information Bulletin No. 426, November 1, 2017); see page 2 - [https://www.fema.gov/media-library-data/1509981634187-ff65775f330fb464d5711c3278f80194/ControlledEquipmentRecission\\_IB\\_Final\\_11-1-17.pdf](https://www.fema.gov/media-library-data/1509981634187-ff65775f330fb464d5711c3278f80194/ControlledEquipmentRecission_IB_Final_11-1-17.pdf)

<sup>6</sup> This is based upon consultation with the key FEMA attorney for the Homeland Security Grants.

<sup>7</sup> <https://www.usnews.com/news/best-states/tennessee/articles/2018-03-27/sen-alexander-not-a-big-fan-of-arming-teachers-at-school>

<sup>8</sup> <https://news.gallup.com/poll/229562/preference-stricter-gun-laws-highest-1993.aspx>

## DELIBERATIVE

increase since 2014, although most of the increase came between December 2017 and March 2018. Another Gallup poll from March 2018<sup>9</sup> surveyed public response to common proposals to stop or reduce mass shootings at schools, with 53% of respondents indicating that having teachers or other school officials with appropriate training carry guns at school would be “not at all effective”, while 47% thought it would be either “very effective” or “somewhat effective”.

*Contrast between Parkland and Santa Fe*

State and local response to recent school shootings has varied. In the wake of the school shooting in Parkland, FL in February 2018, student activists started a grassroots gun reform movement that culminated in nationwide protests. Pressure on lawmakers resulted in the passage of new gun control legislation in Florida, including raising the minimum age to purchase a firearm from 18 to 21, a waiting period for new firearm purchases and new funding for mental health services. Notably, the legislation also provides for funding to arm some teachers in schools contingent upon both the school and the local sheriff’s office agreeing to the need.

However, the public response to the shooting in Santa Fe, Texas in May 2018 was different than what followed the events in Parkland, Florida. Whereas in Parkland the student activists confronted elected officials about stricter firearm control measures, students in Santa Fe asked Senator Ted Cruz (R-TX) to help arm qualified teachers in the aftermath of the shooting, as reported by the *New York Times*<sup>10</sup>. Texas Governor Greg Abbott (R) introduced a school safety plan in May 2018 that prominently featured resources and funding for the hardening of schools with both physical upgrades to school facilities and making available additional armed school resource officers under the State’s optional school marshal programs.

It seems reasonable to attribute the different responses to violence to differences in the dominant cultural viewpoints between the two locations. Santa Fe is rural, working-class and located in Texas. Parkland is urban, affluent and located in Florida. The two locations naturally hold different perspectives on firearms, firearm culture, and violence prevention. For purposes of this analysis, it is assumed the two different responses in Parkland and Santa Fe are indication that different regions of United States respond differently to violence and to violence prevention. As such, like with many complex and polarizing issues, it is difficult to identify common solutions that will find equal support across the different regions of the country.

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<sup>9</sup> “Broad Agreement on Most Ideas to Curb School Shootings”, <https://news.gallup.com/poll/229805/broad-agreement-most-ideas-curb-school-shootings.aspx>

<sup>10</sup> “Anti-Gun Backlash From School Shooting? Probably Not in Texas”, *New York Times*, May 20, 2018 <https://www.nytimes.com/2018/05/20/us/texas-school-shooting-guns.html>

## DELIBERATIVE

*Conclusions*

The polarization of public opinion generally on the topic of guns and the variations in local response to violence could be viewed as support for keeping the use of funds a local decision in a flexible program such as Title IV, Part A. Alternately, the position of other Federal agencies regarding the use of Federal funds for purchasing firearms as well as the inclusion of language in the program statute regarding a weapon-free environment could support the view that Federal Title IV funds not be used for guns, and ammunition, and State and local government should use State and local funds to support such purchases.

As a matter of substance, only a small percentage of school districts would be likely to utilize Title IV, Part A funds to purchase firearms. It would further require the SEA to concur such a purchase is an allowable use. Currently 9 States allow for school staff to possess or have access to firearms, but none mandate arming school staff<sup>11</sup>. It's estimated that several hundred school districts, most of them small and rural, actually provide school staff access to firearms, and usually as part of a layered approach to school hardening or security<sup>12</sup>. In most cases this Secretarial administration has provided States' maximal discretion where the law suggests flexibility.

However, the use of Federal funds for firearms and firearm training is unique, as evidenced by FEMA and DOJ's treatment of this issue. If the Secretary were to permit the use of Title IV, Part A funds for the purchase of firearms, it appears that it would be the first time a Federal agency has authorized the purchase of weapons for school personnel without specific statutory authorization. It is therefore reasonable for the Secretary to disallow this particular use of the funds absent specific Congressional authorization, and it is unlikely that this interpretation would be subject to a successful legal challenge.

One possible compromise to enable those school districts that wish to use their Title IV funding to support the arming of school staff with firearms without directly allowing the purchase of firearms would be to allow the use of funds to support firearms training. There is a consensus in the field that arming school staff necessitates a training program. Allowing the funds to be used for training would support one necessary component of arming school staff but not expose the Department to the political liability were the funds to be allowed to purchase weapons themselves.

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<sup>11</sup> "State Policy Responses to School Violence", Education Commission of the States, May 2018, <https://www.ecs.org/wp-content/uploads/State-Policy-Responses-to-School-Violence.pdf>

<sup>12</sup> "Trump Wants to Arm Teachers. These Schools Already Do.", *New York Times*, March 1, 2018 <https://www.nytimes.com/2018/03/01/us/armed-teachers-guns-schools.html>

## DELIBERATIVE

**Question 1****May Title IV, Part A funds be used to purchase firearms for school staff or train school staff to use firearms?**

## Considerations:

- Title IV, Part A is permissive, broad and relatively flexible regarding allowable uses of funds. The statute provides an extensive list of authorized programs and activities.
- The statute, under section 4108 (Activities to Support Safe and Healthy Students), has been interpreted to permit the use of funds for school safety and security measures such as metal detectors and door locks.
- The Department has not previously considered whether Federal funds may be used to purchase firearms or to train school staff to use firearms.
- The statute neither expressly authorizes nor prohibits the use of funds to purchase firearms or train school staff to use firearms. Under section 4108, a long illustrative list of allowable uses of funds is provided, but it does not include the purchase of firearms or the training of school staff to use firearms.
- ESEA section 4102(5)(B) refers to “the creation and maintenance of a school environment that is free of weapons,” but that has been thought to mean keeping weapons out of the hands of students, as it is included in the definition of the term “drug and violence prevention” for purposes of Title IV, Part A.
- There is nothing in the legislative history to indicate that Congress considered these issues at the time ESSA was enacted.
- Senator Lamar Alexander, Chairman of the Senate Health, Education, Labor, and Pensions Committee, is not supportive of arming teachers.<sup>13</sup> However, Senator Alexander’s views specifically on the use of Title IV funds for this purpose are not clear.
- In March 2018, Congress passed the “Stop School Violence Act,” which provides State and local governments with competitive grants to train local law enforcement, school personnel and students in evidence-based practices that improve early intervention and stop violence in our schools. The statute contains a specific rule of construction prohibiting the use of grant funds for the purpose of purchasing firearms or training in the use of firearms. This is a Department of Justice grant program.
- The use of Federal funds for firearms and firearm training is unique, as evidenced by FEMA and DOJ’s treatment of this issue. If the Secretary were to permit the use of Title IV, Part A funds for the purchase of firearms, it appears that it would be the first time a Federal agency has authorized the purchase of weapons for school personnel without specific statutory authorization. It is reasonable for the Secretary not to allow this use of

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<sup>13</sup> <https://www.usnews.com/news/best-states/tennessee/articles/2018-03-27/sen-alexander-not-a-big-fan-of-arming-teachers-at-school>

DELIBERATIVE

funds absent specific Congressional authorization, and it is unlikely that this interpretation would be subject to a successful legal challenge.

- It should be noted that even if LEAs are permitted to use Title IV, Part A funds to buy firearms for school staff, possession and/or use would have to be consistent with all applicable Federal, State and local laws.

Options for Question 1:

*Option 1*

YES, funds may be used to purchase firearms for teachers and to train teachers on the use of firearms.

*Option 2*

YES, funds may be used to train school staff on the use of guns but NO, funds cannot be used to purchase guns

*Option 3*

NO, funds may not be used to purchase firearms or to train school staff on the use of firearms.

*Recommendation for Question 1: Option 2*

## DELIBERATIVE

**Question 2**

**May an SEA direct its LEAs to use all their Title IV, Part A funds on school safety measures?**

**Analysis for Question 2:**

- There is no specific statutory authority for an SEA to direct or restrict an LEA's use of Title IV, Part A funds.
- The Title IV, Part A program is primarily based upon local decision making, as shown by the importance of the local needs assessment and local stakeholder input. The needs assessment informs the activities an LEA must include in its application to the State, along with its program objectives and intended program outcomes.
- The LEA's application is submitted to its SEA for review. The SEA approves the applications that meet the statutory requirements, monitors program implementation and provides training and technical assistance.
- An SEA may request an application from the LEA; however, this does not appear to mean that the LEA must commit to use the funds as directed by the SEA, because this would be inconsistent with the flexibility afforded to LEAs to determine their Title IV, Part A activities according to the local needs assessment, consultation with stakeholders, program objectives and intended program outcomes.
- The SEA may reserve up to 5% of its allotment for State-wide activities including training, technical assistance and capacity building to LEAs.

Final decisions about the use of funds under Title IV, Part A at the local level would appear to rest with the LEAs as approved by the SEA, based upon the statutory application and implementation requirements that focus on local needs and local input.

## Options for Question 2:

*Option 1*

\_\_\_ YES, a State may direct its LEAs to use all their Title IV, Part A funds for school safety measures.

*Option 2*

\_\_\_ NO, a State may not direct its LEAs to use all their Title IV, Part A funds for school safety measures.

**Recommendation for Question 2: Option 2**



## DELIBERATIVE

Title IV, Part A Use of Funds Issue Summary  
July 18, 2018

**Title IV, Part A Program**

- Title IV, Part A (T4PA) is the Student Support and Academic Enrichment (SSAE) grant program. It was first funded in FY 2017 in the amount of \$400M. In FY18, it was funded for \$1.1B.
- T4PA is a block grant program intended to be used in support of well-rounded education (min. 20%), safe and healthy students (min. 20%), and effective use of technology (a “portion”, no min requirement)
- SEAs subgrant funds to LEAs by formula. SEAs determine allowable use of funds, ensuring use meets statutory requirements and that an LEA’s proposed use has been adequately informed by required stakeholder engagement and a comprehensive needs assessment

**Use of T4PA Funds for Purchase of Firearms and Training School Staff in the Use of Firearms**

- At least 1 LEA and at least 1 SEA have asked the Department about whether T4PA funds can be used for purposes of purchasing firearms and training school staff on the use of firearms.
- OESE has drafted a guidance document for SEAs and LEAs regarding Title IV use of funds generally. A question is should the Department include information in the document regarding whether a SEA may allow T4PA funds to purchase firearms and/or to train school staff on the use of firearms.

**Options for ED’s Policy Position**

*Option 1:* As the statute does not include any prohibition on the purchase of firearms or training school staff on the use of firearms, it is not impermissible for T4PA funds to be used for the purchase of firearms and training school staff in the use of firearms (contingent upon the SEA approving such use for LEAs.)

- Consistent with the broad flexibility intended by law
  - Respects State autonomy in determining appropriate use of funds
  - Consistent with Secretary DeVos’ public comments that the issue of guns in schools should be left up to States and schools
  - Exposes Department to potential political liability
  - Would allow Federal program funds to be used to purchase firearms for school personnel without explicit statutory authority
  - Could be viewed as inconsistent with ESEA section 4102(5)(B), which refers to “the creation and maintenance of a school environment that is free of weapons” (although that has traditionally been thought to mean keeping weapons out of the hands of students.)
-

## DELIBERATIVE

*Option 2:* Treat firearms as a unique item and do not allow T4PA funds to be used for purchase, consistent with the position some other federal agencies have taken with regard to purchasing firearms with Federal funds. Allow T4PA funds to be used for training school staff in the use of firearms (contingent upon the SEA approving such use for LEAs.)

- Provides some flexibility
  - Allows for Federal funds to support 1 of 2 components generally understood to be necessary for the effective arming of school staff (i.e., firearms training but not firearms themselves)
  - Consistent with DOJ and FEMA position that weapons and ammunition are not allowable uses under Homeland Security Grant programs, which are designed to help “enhance school preparedness”
  - Treats firearms uniquely, which could be viewed as subjective (although consistent with DOJ and FEMA’s position)
  - Consistent with ESEA section 4102(5)(B), which refers to “the creation and maintenance of a school environment that is free of weapons” (although that has traditionally been thought to mean keeping weapons out of the hands of students.)
  - Mitigates some potential political liability for Department
  - Inconsistent with recent language included in the STOP School Violence Act, a March 2018 law which explicitly rules out the use of funds for purchase OR training on firearms for school staff
  - Arguably inconsistent with the broad flexibility intended by the T4PA
  - Arguably inconsistent with Secretary DeVos’ public comments that the issue of guns in schools should be left up to States and schools
-

DELIBERATIVE

**Options for Communicating Policy Position**

*Option 1: Make explicit reference in Title IV Use of Funds guidance that T4PA funds can be used for the purchase of firearms and/or the training of school staff in the use of firearms*

Example 1

*Can Title IV, Part A funds be used to purchase firearms and/or train school personnel in the use of firearms?*

As there is no prohibition in the law regarding purchase of firearms or the training of school staff in the use of firearms, and consistent with the broad flexibility intended under Title IV, Part A, it is not impermissible for an SEA to allow Title IV, Part A funds to support the purchase of firearms or the training of school personnel in the use of firearms, after an LEA has met all its requirements under the law regarding use of funds (such as stakeholder engagement and needs assessment), and consistent with all applicable Federal, State and local laws.

*Option 2: Make oblique reference in Title IV Use of Funds guidance that T4PA funds can be used for the purchase of firearms and/or the training of school staff in the use of firearms*

Example 2

*Can Title IV, Part A funds be used for school safety measures that include the purchase of firearms and/or the training of school personnel in the use of firearms?*

So long as all statutory requirements under Title IV, Part A are met, including stakeholder engagement and a comprehensive needs assessment, an SEA has the discretion to allow LEAs to fund any and all activities designed to help support safe and healthy students, including violence prevention strategies and training for school personnel, consistent with all applicable Federal, State and local laws.

*Option 3: Make no reference in Title IV Use of Funds guidance that T4PA funds can be used for the purchase of firearms and/or the training of school staff in the use of firearms.*

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**Office of the Secretary**  
**U.S. Department of Education**  
**Control Document**

<b>Control #: 18-008057</b>	<b>Due Date: 6/15/2018</b>
<b>Document Type: White House Bulk Mail</b>	<b>Signature: Appropriate individual's signature</b>
	<b>Event Date:</b>

**Writer:**  
Charles McMahan

125 North Main  
Porter OK 74454

**Subject:** REGARDS TO FUNDS BEING AVAILABLE TO HELP WITH TRAINING OF AN ARMED STAFF POLICY IN OKLAHOMA SMALL RURAL SCHOOL

**Notes:** Connect copy of response in CCM and notify Darlene Fowler via e-mail with writer's name and control number when completed (ELECTRONIC TRANSMISSION)

Assigned To	Action	Assigned Date	Due Date	Completed Date	Routing Notes
BS	Recontrol	5/29/2018	6/12/2018	6/1/2018	
BS-DESV	Appropriate Handling	5/31/2018	6/12/2018	6/1/2018	
OESE	Appropriate Handling	6/1/2018	6/15/2018	6/8/2018	
OESE-OSHS	Appropriate Handling	6/8/2018	6/15/2018	6/11/2018	
OESE-CURET	Appropriate Handling	6/11/2018	6/15/2018		with J. Botel for handling

**Related Control Numbers:** WH-20180521-16246083

**OBO:**

PLEASE NOTE: A principal office has only five working days to return a misassigned control should it feel that a letter should be handled by another principal office. After five days, you are responsible for answering the letter and will need to coordinate with the appropriate office to draft the reply.

**From:** Mr. Charles Allen McMahan  
**Submitted:** 5/21/2018 3:20 PM EST  
**Email:** ccmcmahan@porter.k12.ok.us  
**Phone:**   
**Address:** 125 N. Main, Porter, Oklahoma 74454 (Porter, OK)  
**Subject:**

**Message:** Hello President Trump, my name is Charles McMahan and I am the Superintendent of a small rural school in Oklahoma grades pre-K thru 12th. We have implemented an armed staff policy at my school and was wondering if there is any money or grants that could help with our training. We have a very strict policy with qualification standards set above the Oklahoma CLEET standards. To date I have attended the Ohio FASTER program at TDI and will be going back this summer for level II. I have also been able to attend two ALERRT (Advanced Law Enforcement Rapid Response Trainings )held at my former school. Oklahoma Education budget is very thin so all of the training comes out of our own pocket. I am all for protecting our students and attending as much training as I can but it would be great if there was some money for schools that arm and train their staff. Last year I personally spent over \$4000 out of my pocket for training ammo alone and then their is the training expenses and a weapon. Anything would help at this point. Thank you for your time and PLEASE keep up the great work of Making America Great Again!

**Hilsey, Shaina**

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**Subject:** HOLD: DELIBERATIVE: McMahan - WH control 18-008057  
**Location:** 3W307

**Start:** Tuesday, October 9, 2018 5:00 PM  
**End:** Tuesday, October 9, 2018 5:15 PM  
**Show Time As:** Tentative

**Recurrence:** (none)

**Meeting Status:** Not yet responded

**Organizer:** Hilsey, Shaina  
**Required Attendees:** Talbert, Kent; Eitel, Robert; Bailey, Nathan; Oppenheim, Peter

**Attachments:** McMahan(1).pdf; WB Instructions - TRUMP(1).doc; OS Interim WH Overdue(1).rtf; control sheet 18-008057(1).rtf

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**From:** Rinkus, Christopher <Christopher.Rinkus@ed.gov>  
**Sent:** Thursday, August 23, 2018 11:35 AM  
**To:** Lee, Ebony; Venable, Joshua  
**Subject:** FW: Letter on Title IV A

FYI this is the earliest correspondence I have about it

---

**From:** Cordes, Bill  
**Sent:** Tuesday, June 12, 2018 10:02 AM  
**To:** Curet-Rivera, Luz; Kesner, Paul  
**Cc:** Botel, Jason; Ramirez, Lisa; Rinkus, Christopher  
**Subject:** RE: Letter on Title IV A

Sorry for the confusion around the questions from Texas.



---

**From:** Curet-Rivera, Luz  
**Sent:** Tuesday, June 12, 2018 9:51 AM  
**To:** Kesner, Paul  
**Cc:** Botel, Jason; Ramirez, Lisa; Cordes, Bill; Rinkus, Christopher  
**Subject:** RE: Letter on Title IV A

Hi again. The questions that came by email and that OGC provided all related to Texas came in to the OSHS program office via the normal communications with grantees (e.g. the state directors). They weren't control mail. We typically do not control these inquiries and have not controlled in the past.

The one control mail was the WH one related to OK for which a draft was prepared for Jason to sign. (Jason, you have a copy of the draft response.)



Let me know if there is any other information needed for this issue.

Thank you.

---

**From:** Curet-Rivera, Luz  
**Sent:** Tuesday, June 12, 2018 8:00 AM  
**To:** Kesner, Paul  
**Cc:** Botel, Jason; Ramirez, Lisa; Cordes, Bill; Rinkus, Christopher  
**Subject:** RE: Letter on Title IV A



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**From:** Briggs, Ashley <Ashley.Briggs@ed.gov>  
**Sent:** Wednesday, October 3, 2018 2:57 PM  
**To:** Talbert, Kent  
**Cc:** Miller, Meredith  
**Subject:** FW: Draft response to OK superintendent - check of signature  
**Attachments:** McMahan(1).pdf; McMahan-18-008057 draft response.jb CLEANAB.doc

Attached for consideration.

*Ashley Briggs, Ed.D.* [Preferred pronoun - she/her]  
U.S. Department of Education  
Office of the Deputy Secretary  
[ashley.briggs@ed.gov](mailto:ashley.briggs@ed.gov) | 202.453.6987  
Office: 7W214

---

**From:** Botel, Jason  
**Sent:** Monday, October 01, 2018 3:18 PM  
**To:** Briggs, Ashley; Miller, Meredith  
**Subject:** Fwd: Draft response to OK superintendent - check of signature

Begin forwarded message:

**From:** "Botel, Jason" <[Jason.Botel@ed.gov](mailto:Jason.Botel@ed.gov)>  
**Date:** October 1, 2018 at 2:52:44 PM EDT  
**To:** "Talbert, Kent" <[Kent.Talbert@ed.gov](mailto:Kent.Talbert@ed.gov)>  
**Cc:** "Brogan, Frank" <[Frank.Brogan@ed.gov](mailto:Frank.Brogan@ed.gov)>, "Curet-Rivera, Luz" <[Luz.Curet-Rivera@ed.gov](mailto:Luz.Curet-Rivera@ed.gov)>, "Ramirez, Lisa" <[Lisa.Ramirez@ed.gov](mailto:Lisa.Ramirez@ed.gov)>  
**Subject:** RE: Draft response to OK superintendent - check of signature

Hi Kent,



---

**From:** Botel, Jason <Jason.Botel@ed.gov>  
**Sent:** Friday, October 5, 2018 4:11 PM  
**To:** Hilsey, Shaina  
**Cc:** Talbert, Kent; Eitel, Robert; Bailey, Nathan; Oppenheim, Peter  
**Subject:** DELIBERATIVE: McMahan - WH control 18-008057  
**Attachments:** McMahan(1).pdf; WB Instructions - TRUMP(1).doc; OS Interim WH Overdue(1).rtf; control sheet 18-008057(1).rtf

Shaina, please schedule 15 min for Nate, Bob, Peter and Kent to meet about this next week.

-----Original Message-----

**From:** Curet-Rivera, Luz  
**Sent:** Friday, October 05, 2018 4:08 PM  
**To:** Botel, Jason  
**Subject:** McMahan - WH control 18-008057

Jason,

Let me know if more information is needed.

Thank you.

Luz

**From:** Miller, Meredith  
**Sent:** 1 Oct 2018 19:15:42 +0000  
**To:** Talbert, Kent; Botel, Jason  
**Cc:** Brogan, Frank; Curet-Rivera, Luz; Ramirez, Lisa; Briggs, Ashley  
**Subject:** RE: Draft response to OK superintendent - check of signature

[REDACTED]

---

**From:** Talbert, Kent  
**Sent:** Monday, October 01, 2018 3:12 PM  
**To:** Botel, Jason  
**Cc:** Brogan, Frank; Curet-Rivera, Luz; Ramirez, Lisa; Briggs, Ashley; Miller, Meredith  
**Subject:** RE: Draft response to OK superintendent - check of signature

[REDACTED]

Kent

---

**From:** Botel, Jason  
**Sent:** Monday, October 01, 2018 2:53 PM  
**To:** Talbert, Kent  
**Cc:** Brogan, Frank; Curet-Rivera, Luz; Ramirez, Lisa  
**Subject:** RE: Draft response to OK superintendent - check of signature

Hi Kent,

You and I had an email exchange about the attached back in July; at that point, you were comfortable with our draft response, but [REDACTED] and I want to make sure you are still comfortable with us sending it out. We obviously would need to revise it to put some things in the past tense that have already occurred ([REDACTED])

[REDACTED]

[Additional submissions by Mr. Levin follow:]

3/23/2019

Debt Collective Mail - Fwd: Here's your monthly statement



Thomas Gokey <thomas@debtcollective.org>

**Fwd: Here's your monthly statement**

Thomas Gokey <thomasgokey@gmail.com>  
To: Thomas Gokey <thomas@debtcollective.org>

Wed, Mar 20, 2019 at 2:26 PM

----- Forwarded message -----  
From: **Nadine Stewart** <nastewart74@aol.com>  
Date: Wed, Mar 20, 2019 at 2:12 PM  
Subject: Fwd: Here's your monthly statement  
To: <thomasgokey@gmail.com>

i just checked my spam box and found this ...

-----Original Message-----  
From: Navient <CustomerService@navient.com>  
To: NASTEWART74 <NASTEWART74@AOL.COM>  
Sent: Sun, Mar 17, 2019 11:07 am  
Subject: Here's your monthly statement

# NAVIENT.

To view all information regarding this notification, [log in to your Navient Inbox](#).

**NADINE A STEWART, here's a snapshot of your monthly statement.**

**Total payment due:** \$39.12  
**Due date:** 04/16/19

Please note that this email does **not** include all information from your statement. [Log in to your Navient inbox to view it now.](#)

**Ways you can pay**

**Online:** This is the fastest way to bring your account up to date. To make a payment, [log in to your account at Navient.com](#). With our mobile site, it's easy to pay on your smartphone, too.

**By phone:** Call us at 888-272-5543.

**By mail:** Send checks or money orders to Navient, P.O. Box 9533, Wilkes-Barre, PA 18773-9533. Make sure to include your statement, or write your account number on the check or money order.

3/23/2019

Debt Collective Mail - Fwd: Here's your monthly statement

[Manage your account online at Navient.com](#)



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WR023

3/24/2019

Gmail - Fwd: Borrower Defense Claim



Thomas Gokey &lt;thomasgokey@gmail.com&gt;

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**Fwd: Borrower Defense Claim**

Jessica Madison <jessica.w.madison@gmail.com>  
To: thomasgokey@gmail.com

Mon, Mar 27, 2017 at 12:02 PM

----- Forwarded message -----  
From: U.S. Department of Education <noreply@studentloans.gov>  
Date: Fri, Jan 13, 2017, 14:29  
Subject: Borrower Defense Claim  
To: <jessica.w.madison@gmail.com>

## Federal Student Aid

An OFFICE of the U.S. DEPARTMENT of EDUCATION

10E

Dear Jessica,

The Department of Education has approved your claim for forgiveness of your federal student loans under the borrower defense to repayment rule, 34 C.F.R. §685.206(c).

**If you have Direct Loans related to your approved claim:**

**The federal student Direct Loans you received for the programs of study related to your approved claim will be discharged (forgiven).** The Department will notify your loan servicer of the approved forgiveness, and the forgiveness should be completed within the next 60-120 days. Your servicer will send you more details about the forgiveness, including which loans have been forgiven.

If your account has no other outstanding balances, and your claim is not limited by a statute of limitations, in addition to your loan forgiveness you also may receive a refund for prior payments made on the Direct Loans related to your approved claim. If your claim is limited by a statute of limitations, you may not receive a refund of prior payments that you made on the loans that have been forgiven. You will receive more information about that determination.

**If you have Federal Family Education Loan (FFEL) Program and/or Perkins Program loans related to your approved claim:**

<https://mail.google.com/mail/u/0/?ik=4a4a567fb8&view=pt&search=all&permmsgid=msg-f%3A1563039402583407785&simpl=msg-f%3A1563039402583407785> 1/2

3/24/2019

Gmail - Fwd: Borrower Defense Claim

If you have Federal Family Education Loan (FFEL) Program and/or Perkins Program loans related to your approved claim and you are eligible for loan consolidation, you must consolidate those loans into a Direct Consolidation Loan in order to obtain forgiveness for the outstanding balance of those loans. **Unless you consolidate those loans, the Department cannot forgive them.** You will receive a future notification providing the steps to take in order to complete loan consolidation and proceed with a discharge.

**Private Student Loans:**

Borrower defense to repayment does not apply to private student loans. Therefore, nothing in this email applies to any private student loans you may have.

**Next Steps:**

This email only applies to the federal student loans that you received for the programs of study related to your approved claim. **Until you have received notice from your loan servicer that the appropriate loans have been discharged, you must continue to make payments on your loans unless they are in forbearance or deferment.**

If you have questions about this notice, please contact the Department of Education at [FSAOperations@ed.gov](mailto:FSAOperations@ed.gov) or at 1-855-279-6207.

Sincerely,

U.S. Department of Education

Connect with us:



3/24/2019

Gmail - Fwd: Borrower Defense Claim



Thomas Gokey &lt;thomasgokey@gmail.com&gt;

**Fwd: Borrower Defense Claim**

1 message

Jessica Madison <jessica.w.madison@gmail.com>  
 To: Thomas Gokey <thomas@debtcollective.org>

Thu, Dec 7, 2017 at 11:07 AM

----- Forwarded message -----

From: FSASOperations <FSASOperations@ed.gov>  
 Date: Wed, Dec 6, 2017 at 10:11 PM  
 Subject: Borrower Defense Claim  
 To: jessica.w.madison@GMAIL.COM <jessica.w.madison@gmail.com>

December 6, 2017

**Re: Borrower Defense Claim (BD150043)**

Dear JESSICA MADISON,

The Department of Education has approved your claim for forgiveness of your federal student loans under the borrower defense to repayment rule, 34 C.F.R. §685.206(c).

It has been determined that you have Federal Family Education Loan (FFEL) Program and/or Perkins Program loans eligible for discharge in association with your claim. In order to receive a discharge of your FFEL/Perkins loans, you must consolidate those loans into a Direct Consolidation Loan in order to obtain forgiveness for the outstanding balance of those loans. **Unless you consolidate those loans, the Department cannot forgive them.**

The following loans have been identified as eligible for discharge, but only after consolidation and only for the balance consolidated:

School Name	Loan Type	First Disbursement Date	Total Disbursed Amount
EVEREST UNIVERSITY	FFEL Stafford (Unsubsidized)	8/25/2005	\$4000
EVEREST UNIVERSITY	FFEL Stafford	8/26/2005	2625
EVEREST UNIVERSITY	FFEL Stafford	4/28/2006	2625
EVEREST	FFEL Stafford	4/29/2006	4000

<https://mail.google.com/mail/u/0/?ik=4a4567fb8&view=pt&search=all&permthid=thread-f%3A1586141952609504588&siml=msg-f%3A1586141952609504588>

1/3



3/24/2019

Gmail - Fwd: Borrower Defense Claim

UNIVERSITY	(Unsubsidized)		
EVEREST UNIVERSITY	FFEL Stafford	1/12/2007	3500
EVEREST UNIVERSITY	FFEL Stafford (Unsubsidized)	1/12/2007	4000
EVEREST UNIVERSITY	FFEL Stafford (Unsubsidized)	3/17/2008	450

The process to consolidate your loans can be completed online at <https://studentloans.gov/myDirectLoan/launchConsolidation.action>. Under "Consolidate Your Loans" click "log in to start." On this website you can follow a step by step process to apply for consolidation of your loans and can choose from one of the existing consolidation loan servicers. To submit a written application for consolidation, print and complete the PDF found at the following website: <https://static.studentloans.gov/images/ApplicationAndPromissoryNote.pdf>. Please follow the submission instructions provided on the website. **IF** your loans are currently in default, you must agree to an income driven repayment plan to finalize your consolidation.

Once you have received notice from your consolidation servicer that ALL of your loan(s) have been consolidated, **you MUST send an email to [ContinueDischarge@ed.gov](mailto:ContinueDischarge@ed.gov) including your full name, your claim number of BD150043, and the name of your consolidation loan servicer (e.g. Navient, Nelnet Servicing, FedLoan Servicing, Great Lakes Educational Loan Services, etc.).** It is **IMPORTANT** that you send this email in order to continue your discharge process.

3/24/2019

Gmail - Fwd: Borrower Defense Claim

Once your request to continue your discharge has been received by the Department, the discharge process will continue. If all of the loans included in your Direct Consolidation Loan are eligible for discharge, your loan will be discharged. If only some of the loans included in your Direct Consolidation Loan are eligible for discharge, those loans will be discharged and the balance of the consolidation loan will be decreased to reflect only those loans not eligible for discharge.

Please note that only the outstanding balance amount of the FFEL or Perkins loan that is consolidated into a Direct Consolidation Loan will be eligible for discharge. Any amounts previously paid on FFEL or Perkins loans will NOT be refunded.

If you have questions about this notice, please contact the Department of Education at [FSASOperations@ed.gov](mailto:FSASOperations@ed.gov) or at 1-855-279-6207.

Sincerely,

U.S. Department of Education

[Additional submissions by Ms. McBath follow:]

Case: 1:19-cv-00380-DAP Doc #: 1 Filed: 02/21/19 1 of 22. PageID #: 1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MARK DOTTORE, COURT-	)	CASE NO.
APPOINTED RECEIVER FOR THE	)	
RECEIVERSHIP ENTITIES	)	
3344 Canal Road	)	JUDGE
Cleveland, OH 44113,	)	
	)	
Plaintiff,	)	<b><u>VERIFIED COMPLAINT</u></b>
	)	
v.	)	<b>(Jury Demand Endorsed Hereon)</b>
	)	
STUDIO ENTERPRISE MANAGER,	)	
LLC	)	
c/o Corporation Service Company	)	
Statutory Agent	)	
251 Little Falls Drive	)	
Wilmington, DE 19808	)	
	)	
and	)	
	)	
EDUCATION PRINCIPLE	)	
FOUNDATION	)	
c/o Corporation Service Company	)	
Statutory Agent	)	
251 Little Falls Drive	)	
Wilmington, DE 19808	)	
	)	
	)	
Defendants.	)	

Plaintiff Mark Dottore, Receiver for the Receivership Entities ("Plaintiff" and/or the "Receiver"), by and through undersigned counsel, for its Complaint against Defendants Studio Enterprise Manager, LLC ("Studio") and Education Principle Foundation ("Foundation") (Studio together with Foundation are collectively known as the "Defendants") states as follows:

{01286538-1}

### Introduction

1. Plaintiff is the Court-Appointed Receiver for the Receivership Entities pursuant to an Order by this Court dated January 18, 2019 in *Digital Media Solutions, LLC v. South University of Ohio, LLC et al.*, Case No. 1:19-cv-145 (N.D. Ohio). The Receivership Entities are parties to various transactions with the Defendants both individually and through their respective parent entities, The Arts Institute International, LLC, Dream Center South University, LLC and Dream Center Argosy University of California, LLC and Argosy Education Group, LLC.

2. Plaintiff brings this action for rescission, declaratory judgment, conversion, breach of contract and unjust enrichment.

### PARTIES

3. The Receiver is a citizen of the State of Ohio and is the Receiver for Dream Center Education Holdings, LLC (“DCEH”) and its subsidiaries, including: South University of Ohio LLC, The DC Art Institute of Raleigh-Durham LLC, The DC Art Institute of Charlotte LLC, DC Art Institute of Charleston LLC, DC Art Institute of Washington LLC, The Art Institute of Tennessee- Nashville LLC, AiTN Restaurant LLC, The Art Institute of Colorado LLC, DC Art Institute of Phoenix LLC, The Art Institute of Portland LLC, The Art Institute of Seattle LLC, The Art Institute of Pittsburgh, DC LLC, The Art Institute of Philadelphia, DC, LLC, DC Art Institute of Fort Lauderdale LLC, The Illinois Institute of Art LLC, The Art Institute of Michigan LLC, The Illinois Institute of Art at Schaumburg LLC, DC Art Institute of Phoenix, LLC and its direct subsidiaries the Art Institute of Las Vegas LLC, the Art Institute of Indianapolis, LLC, and AiIN Restaurant LLC; Dream Center Argosy University of California LLC and its direct subsidiaries, and Argosy Education Group LLC; Dream Center Education Management

LLC; and, South University of Michigan LLC (collectively, the "Receivership Entities"). By order of the United States District Court for the Northern District of Ohio entered January 18, 2019 in the matter *Digital Media Solutions, LLC v. South University of Ohio, LLC, et al.*, No. 1:19-cv-145, the Receiver is empowered to bring this action.

4. Studio is a Delaware limited liability company with its principal place of business in the State of California.

5. Foundation is a Delaware not for profit corporation with its principal place of business in the state of California.

#### JURISDICTION AND VENUE

6. This Court has ancillary jurisdiction over this matter pursuant to *Pope v. Louisville & C. Ry. Co.*, 173 U.S. 573 (1899), and *Haile v. Henderson Nat. Bank*, 657 F.2d 816 (6th Cir. 1981). In *Haile*, the Sixth Circuit explained that "the initial suit which results in the appointment of the receiver is the primary action and that any suit which the receiver thereafter brings in the appointment court in order to execute his duties is ancillary to the main suit. As such, the district court has ancillary subject matter jurisdiction of every such suit irrespective of diversity, amount in controversy or any other factor which would normally determine jurisdiction." *Haile*, 657 F.2d at 822.

7. This action is brought pursuant to this Court's Order Appointing Receiver, entered January 18, 2019, in the matter *Digital Media Solutions, LLC v. South University of Ohio, LLC, et al.*, a case in which this Court has original jurisdiction. The order empowers the Receiver to bring this action to rescind the various transactions entered by DCEH with Defendants.

8. This Court has personal jurisdiction over the Defendants by virtue of 28 U.S.C. § 1332, 28 U.S.C. § 754 and 28 U.S.C. § 1692.

a. 28 U.S.C. § 754 provides that

A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, upon giving bond as required by the court, be vested with complete jurisdiction and control of all such property with the right to take possession thereof.

He shall have capacity to sue in any district without ancillary appointment, and may be sued with respect thereto as provided in section 959 of this title.

Such receiver shall, within ten days after the entry of his order of appointment, file copies of the complaint and such order of appointment in the district court for each district in which property is located. The failure to file such copies in any district shall divest the receiver of jurisdiction and control over all such property in that district.

b. 28 U.S.C. § 1692 provides that

In proceedings in a district court where a receiver is appointed for property, real, personal, or mixed, situated in different districts, process may issue and be executed in any such district as if the property lay wholly within one district, but orders affecting the property shall be entered of record in each of such districts.

9. The Receiver timely filed § 754 notices in the judicial districts where the Defendants are located; *i.e.*, the Northern District of California, the Eastern District of California, the Central District of California, the Southern District of California, and the District of Delaware. *See Digital Media Solutions, LLC v. South University of Ohio, LLC et al.*, Case No. 3:19-mc-80016 (N.D. Cal. Jan. 24, 2019); *Digital Media Solutions, LLC v. South University of Ohio, LLC et al.*, Case No. 2:19-mc-16 (E.D. Cal. Jan. 25, 2019); *Digital Media Solutions, LLC v. South University of Ohio, LLC et al.*, Case No. 2:19-mc-12 (C.D. Cal. Jan. 25, 2019); *Digital Media Solutions, LLC v. South University of Ohio, LLC et al.*, Case No. 3:19-mc-96 (S.D. Cal. Jan. 24, 2019); *Digital Media Solutions, LLC v. South University of Ohio, LLC et al.*, Case No. 1:19-mc-20 (D. Del. Jan. 25, 2019). In

addition, the Receiver timely filed § 754 notices in every judicial district in the United States—with the exception of the territorial courts for the Northern Mariana Islands, Guam, and the Virgin Islands. *See* Exhibit A (Excel Spreadsheet of § 754 notices).

10. In *Haile*, the Sixth Circuit explained that by virtue of §§ 754 and 1692 “the territorial jurisdiction of the appointing court is extended to any district of the United States where property believed to be that of the receivership estate is found, provided that the proper documents have been filed in each such district as required by § 754.” *Haile*, 657 F.2d at 823. Thus, the appointing court’s “process extends to any judicial district where receivership property is found. As such, the minimum contacts analysis, as a limitation on state extra-territorial power, is simply inapposite.” *Id.* at 826; *see also S.E.C. v. Bilzerian*, 378 F.3d 1100, 1106 (D.C. Cir. 2004) (declining to “part company” with *Haile* and concluding “that the ‘interplay’ between Rule 4(k) and 28 U.S.C. §§ 754 and 1692 properly provided the district court with jurisdiction over the person of [the defendant]”).

11. Accordingly, this Court has personal jurisdiction over the Defendants.

12. Venue is proper in this Court pursuant to the Sixth Circuit’s decision in *Haile* and 28 U.S.C. § 1391(b)(3), as the Defendants are subject to personal jurisdiction in this judicial district.

#### **FACTUAL BACKGROUND**

##### **I. DCEH Purchases the Universities from EDMC.**

13. Dream Center Education Holdings, LLC (“DCEH”), has owned, since October 2017, through a series of subsidiaries, a number of universities that operate under the names “South University,” “Argosy University,” and “Art Institutes” (collectively, the “Universities”).

14. DCEH purchased the Universities from Education Management Corporation (“EDMC”) in October 2017, with a second closing in January 2018.

15. Within sixty days of the closing of DCEH’s purchase of the Universities from EDMC, DCEH discovered that EDMC and its representatives misrepresented key financial factors concerning the Universities.

16. Despite DCEH’s best efforts, the Universities were, on the whole, failing without hope for redemption.

17. As a result of the cash flow issues, the Universities, and by extension DCEH, suffered. DCEH became delinquent in its obligations to a wide variety of vendors.

**II. DCEH and Its Subsidiaries Enter into a Series of Contracts with Defendants and Their Subsidiaries.**

18. In mid to late December 2018 and early January, 2019, DCEH executed a series of contracts with Studio, Dream Center Education Management (“DCEM”) and The Arts Institute International, LLC (“AII” and collectively with all its Subsidiaries, the “Ai University System”), Dream Center South University, LLC (“South” and collectively with all its Subsidiaries, the “South University System”), and Argosy Education Group, LLC (“AEG”), Dream Center Argosy University of California, LLC (“Argosy” and collectively with all its Subsidiaries, the “Argosy University System”). These contracts include:

- a. a Framework Agreement;
- b. an Interim Framework Agreement;
- c. an Amended and Restated Framework Agreement;



- d. an Equity and Asset Purchase Agreement
- e. a Master Services Agreement; and
- f. a Transition License Service Agreement.

19. Although these contracts are lengthy and complex, at their core, they are simple enough: they allowed Studio to strip DCEH of all its valuable business assets pertaining to the Art Institute University System and the South University System. These contracts left DCEH all of the debts and liabilities for the Excluded Campuses<sup>1</sup> plus the equity and assets to AEG and Argosy University System. DCEH was therefore left with schools that were in the process of closing thanks to their poor financial performance inherited from EDMC.

**A. The Framework Agreement and its Related Contracts.**

20. On or about December 22, 2018, Studio, DCEH, DCEM and certain members of the AI University System entered into a Framework Agreement (the “Original Agreement”). A copy the Original Agreement is attached hereto and marked as Exhibit “B”.

21. On or about December 26, 2018, Studio, DCEH, DCEM, South University System, Argosy University System, Ai University System, Candlewood Special Situations Master Fund I, L.P., Flagler Master Fund SPC, Ltd entered into an Interim Framework Agreement (“IFWA”)<sup>2</sup>. A working copy of the IFWA is attached hereto and marked as Exhibit “C”.

22. On or about January 7, 2019, Studio, DCEH, South University System, Argosy University System, Ai University System and each subsidiary university of South,

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<sup>1</sup> Capitalized terms shall have the meaning set forth in the ARFWA, EAPA, MSA or TSLA unless otherwise defined herein

<sup>2</sup> Receiver has only been provided a working version of the IFWA and has never been provided the final version or a fully executed copy of the IFWA even though the Receiver has requested a copy.

Argosy and AII entered into an Amended and Restated Framework Agreement (“ARFWA”). DCEH, South, Argosy, AEG, AII and together with all the subsidiary universities are collectively known as the “Dream Parties.” A copy of the ARFWA is attached hereto and marked as Exhibit “D”<sup>3</sup>.

23. The ARFWA removed DCEM as a party and added the subsidiary universities of Argosy, South and AII as parties.

24. The ARFWA created the framework for Studio to enter into certain additional agreements with Dream Parties to provide certain services pursuant to and in accordance with the terms of the ARFWA and the Managed Services Agreements (“MSA”).

25. Contemporaneously with the execution of the ARFWA, MSAs would be executed by Studio and each University System whereby Studio would provide Non-Core Services.

26. The ARFWA required that contemporaneously with the execution of the ARFWA (and prior to the consummation and execution of the transactions contemplated by the Equity and Asset Purchase Agreement (“EAPA”)), each University System<sup>4</sup> shall execute and deliver to Studio a MSA.

27. Pursuant to the MSA, Studio and AII, South and Argosy agreed upon a budget for the operations of each University system that was supposed to reflect sufficient revenue to support the fees payable under the MSA for such Specified Campus, as well as appropriate funding for all required operations including the

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<sup>3</sup> Receiver’s copy of the Disclosure Schedules to the ARFWA is incomplete. A complete of the Schedules was to be delivered to the parties per the ARFWA by January 31, 2019. The Receiver still has not received a complete list.

<sup>4</sup> “University System” means individually South University System, Argosy University System and Ai University System and collectively means “University Systems”.

ongoing delivery of academic and other Core Services which are outside the scope of the MSA.

28. There were three MSAs.
  - a. One was between Studio and the Argosy University System.
  - b. Another was between Studio and AII. This contract provided that the Services would be provided only for the Specified Campuses. The Art Institute entities now in the Receivership Estate were defined to be “Excluded Campuses,” not “Specified Campuses,” and therefore were not covered by that MSA.
  - c. The third MSA was between Studio and Dream Center South University LLC. No reference was made to the subsidiary universities, and the signator did not sign in a representative capacity for the subsidiaries, each of which was an independent LLC. Accordingly, the South University entities now in the Receivership Estate were not covered by that MSA.
29. The ARFWA further gave Studio the discretion to purchase or have its Subsidiaries purchase from the Dream Parties certain Non-Core Assets required to provide the service outlined in the managed services agreement with respect to the University System.
30. The ARFWA further gave Studio the discretion to choose which real property leases to assume and then cause such Subsidiary to sublease the Assumed Lease Obligations for those leases.
31. Pursuant to the ARFWA, Studio and DCEH were required to enter into a Transition Services and License Agreement (“TSLA”).

32. Further, Studio was given the right to acquire the Core Assets and Core Assumed Liabilities of any Specified Campus for which Studio or its Affiliates have acquired the Non-Core Assets.

33. Per the ARFWA, Studio was given the right to cause DCEH to assign and transfer 100% of the issued and outstanding equity interest in AII, Argosy and South.

34. As such, contemporaneously with the execution and delivery of the ARFWA, Studio's designee, Defendant Education Principle Foundation ("Foundation") was to enter into an Equity and Asset Purchase Agreement ("EAPA") to purchase the Equity Interest of each of AII and South owned by DCEH.

35. The ARFWA further required that any Excluded Campus to cease using any marks related to the Specified Campuses within one year from the date of the ARFWA.

36. The ARFWA further required that DCEH remove or cause the removal of all directors, trustees, managers and officers of all Boards and Boards Committees and all other position at South, Argosy, AII and their respective Subsidiaries. It gave the Foundation the right to designate the replacement directors, trustees, managers and officers of South, Argosy and AII.

37. The ARFWA required that except for The Art Institute of California-San Diego and the Art institute of Seattle, DCEH was obligated to Teach-Out any campus identified as an Excluded Campus

38. The ARFWA required DCEH and each member of the Argosy University System and each member of the Ai University System to grant to Studio, for its benefit, to secure payment and performance in full of the obligations and liabilities of DCEH the Argosy University System and the Ai University System, a continuing security interest

in, and pledges to Studio all of its respective right, title and interest in and to, the Collateral.

39. DCEH and each member of Argosy University System and the Ai University System authorized Studio to file UCC financing statements with all appropriate jurisdictions to perfect or protect Studio and its Affiliates interests or rights hereunder in the Collateral.<sup>5</sup> DCEH and the other entities complied with their obligation to so file, and copies of the UCC Financing Statements are collectively attached hereto as Exhibit "E".

40. The ARFWA further required DCEH and each member of the Ai University System and Argosy and AEG to execute and deliver a bill of sale assignment and assumption agreement pursuant to which each Ai Receivable Assignor would assign to Studio all accounts receivable that are Collateral for the consideration of One Dollar.

**B. The Equity Asset Purchase Agreement.**

41. On or about January 7, 2019, Foundation, South University System, Ai University System (collectively as "Purchasers") and DECEH as Seller entered into an EAPA. A copy of the unexecuted EAPA is attached hereto as Exhibits "G".

42. Pursuant to the EAPA, Studio designated (a) the Foundation to purchase the Equity Interests of AII and South ("Transferred Interests"), provided that prior to such purchase, the Equity Interest in the Excluded Campuses were transferred to DCEH; (b) AII to purchase the Business Assets<sup>6</sup> used exclusively by the Ai University

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<sup>5</sup> The security interests granted by Argosy University System herein only applied to the assets of the following Arts Institute campuses which are a part of the Argosy University System: The Art Institute of California – Hollywood; The Arts Institute of California- Orange County; The Arts Institute of California – Inland Empire; The Arts Institute of California – Sacramento; and The Arts Institute of California – San Francisco.

<sup>6</sup> Business Assets included the assets of Seller with respect to the Specified and Excluded Campuses.

System (AII Transferred Assets”); and (c) South to purchase the Business Assets used exclusively by the South University System (“South Transferred Assets”)

43. The purchase price for the AII Transferred Assets (which included all Accounts Receivable of or related to the AI University System held by DCEH) was One Dollar (\$1.00) plus the assumption of the AII Assumed Liabilities.

44. The purchase price for the South Transferred Assets was One Dollar (\$1.00) plus the assumption of the South Assumed Liabilities.

**C. The Managed Services Agreements.**

45. On or about January 7, 2019, Studio entered into MSAs with each of AII, South, AEG, and Argosy. The MSA for South is attached hereto as Exhibit “H”. The MSA for the Argosy University System is attached hereto as Exhibit “I”. The MSA for AII is attached hereto as Exhibit “J”.

46. The MSAs provided that Studio, subject to DCEH meeting its obligation under the TSLA, would provide the operational support services as further set forth in the Statement of Work attached to the MSA as Exhibit A.

47. The Statement of Work required Studio to provide (i) Financing and General Services, (ii) Program Analysis, Marketing, and New Inquiry Generation, (iii) Enrollment Management Through Application, (iv) Student Life Cycle Support Services, and (v) Student Mentoring Services (post-enrollment).

48. The schools themselves were responsible for providing the Core Services.

49. The MSA allowed Studio to provide the services through the TSLA with DCEH or third parties.

50. Studio was to be paid a monthly fee for the provision of services, with the payment to be made *in advance* and equal to the projected Service Fee (subject to the True-Up amount, if any), plus the TSA Fee as that term is defined in the MSA.

51. The Projected Service Fee was to be paid by the University monthly in advance on the first day of each month of the Term in cash by wire to the account specified by Studio.

52. The MSAs state that if the University, as that term is defined in each MSA, fails to pay its portion of the TSLA during the Initial Term (through the payment of Non-Core Expenses that correspond to the University's allocated share of the TSA fee), DCEH may not be able to continue to provide the shared services to the other Universities that also receive such shared services.

53. The Initial Term for the MSA was for a period for fifteen (15) years.

**D. The Transition Services and License Agreement.**

54. On or about January 7, 2019, Studio and DCEH entered into a TSLA. An execution version of the TSLA is attached hereto as Exhibit "K".

55. The TSLA allowed Studio to subcontract with DCEH for it to provide certain of the Managed Services that Studio was obligated to provide to the University.

56. The TSLA further granted Studio the right to purchase from DCEH the full right and ability to use such software and other Technology and to receive certain Managed Services.

57. Pursuant to the TSLA, DCEH agreed to provide the Transition Service set forth on Schedule A during the Initial Term.

58. The Transition Services include: (i) Accounting Services; (ii) Financial Information Systems Services, (iii)FP&A Services, (iv) Procurement Services, (v)

HR/Benefit Services, (vi) Payroll Services, (vii) Marketing Services & Communication Services, (viii) State Licensing Services, (ix) Central Student Financial Services, (x) Corporate Support, (xi) Information Technology (xii) Data Downloads, (xiii) Design, Development or Migration of IT Systems, (xiv) Service Center, and (xv) Managed Services. The Transition Services were all services Studio was obligated to provide pursuant to the MSAs.

59. As compensation for DCEH's provision of the Transition Services, Studio was to pay DCEH the monthly fees set forth on Schedule A within ten (10) Business Days after the end of each month of the Term, even though Studio was paid in advance on the first day of the previous month.

60. Studio, therefore, would retain the difference between the Service Fee and the Transition Services Fee.

61. Upon information and belief, the Initial Term of the TSLA began on January 7, 2019 and continues in effect until termination of the MSA.

**III. The Equity Asset Purchase Agreement Allowed Studio to Strip DCEH of All Its Valuable Business Assets.**

62. The theory underlying the MSA and the TSLA was that the Universities would receive monies from the United States Department of Education (the "DOE"), pay those monies over to Studio pursuant to the Service Fee, which Studio would then pay DCEH as the Transition Services Fee, retaining for itself the difference.

63. The EAPA also allowed Studio to strip DCEH of all valuable Business Assets pertaining to the Ai University System and the South University System, while leaving with DCEH all of the debts and liabilities for the Excluded Campuses. DCEH



was therefore left with schools that were in the process of closing thanks to their poor financial performance inherited from EDMC.

64. Studio's consideration of One Dollar (\$1.00) for the Transferred Interest for Ai and South and an additional One Dollar (\$1.00) each for the Transferred Assets of the Ai University System and South University System was inadequate consideration for the Transferred Interest and Transferred Assets that Studio received.

65. Studio has failed to abide by its obligations under the ARFWA, EAPA, MSA and TSLA.

66. Studio has failed to pay DCEH the Transition Services Fee as set forth in the TSLA, and, therefore, making it impossible for DCEH to continue provide the Transition Services.

67. As DCEH becomes unable to provide the Transition Services, Studio has failed to provide the Services due Ai University System, South University System and Argosy University System.

68. Studio further failed to set up an account with Microsoft Team Foundation Services per the terms of the TSLA.

**CAUSES OF ACTION**

**COUNT I: Rescission**

69. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 68 hereof as if fully re-written.

70. Upon information and belief, Studio provided no services, funds, or other things of value in exchange for DCEH entering into the ARFWA, EAPA, and the TSLA and the Receivership Entities, through their Parent Company entering into Managed

Service Agreements (ARFWA, EAPA, MSA and TSLA are hereinafter collectively referred to as the “Contracts”).

71. The Contracts therefore fail for want of consideration.

72. The Contracts are unconscionable on both substantive and procedural grounds.

73. The Contracts are unconscionable on substantive grounds insofar as they: call for DCEH and the Receivership Entities to pay for services Studio will either provide, or pay to have provided; maintain an overall imbalance in the obligations and rights imposed thereunder; provide Studio with unjustified and unjustifiable liquidated damages of the amount of the Service Margin (calculated as the product of (i) the Non-Core Expenses multiplied by (ii) Margin Rate, provided that during the Initial term the Service margin shall not be less than the Minimum Service Margin (i.e. \$1,000,000.00)) for the duration of the Initial Term in the event the Receivership Entities terminate them without cause; and pay Studio a Service Fee for doing absolutely nothing. Accordingly, the Contracts must fail since they are so extreme as to appear unconscionable according to the mores and business practices of today

74. The Contracts are unconscionable on a procedural basis insofar as the lopsided terms resulted from the imbalance in bargaining power.

75. Upon information and belief, the Receiver contends that DCEH and the Receivership Entities were forced into the Contracts by the United States Department of Education with the threat that the DOE would cut all funding to the schools unless the money flowed through Studio in the process set forth by the Contracts. The Receiver further alleges under information and belief that Defendants’ representatives spent considerable time and resources pitching the deal to the DOE to thereby cause DOE to

force the Contracts upon the Receivership Entities. There was no legitimate negotiation of the Contracts. Accordingly, the Contracts must be considered procedurally unconscionable.

76. Equitable rescission is the only appropriate remedy insofar as the Contracts resulted in not only the Receivership Entities being required to pay Studio at a minimum \$1 million per month for the remainder of the Initial Term, with Studio thereafter refusing to pay DCEH the Transition Services Fee it contracted with DCEH to pay, while Studio took a security interest in the Collateral of the entities set forth on the UCC financing statements. Studio filed UCC financing statements to perfect those security interests. Only an equitable rescission affected by this Court will serve to unwind the entire transaction, including the cancellation of the wrongfully-filed UCC financing statements.

77. Accordingly, DCEH seeks equitable rescission of the Contracts to which it is a party; specifically, the Framework Agreement, The Interim Framework Agreement, The Amended & Restated Framework Agreement, The Transition Services and License Agreement, and to the extent it conveyed equity and assets of any Receivership Entities, the Equity and Asset Purchase Agreement.

78. AEG and Argosy seek rescission of the Master Services Agreements they entered.

79. The Receivership Entities seek rescission of the Amended & Restated Framework Agreement.

80. Should the Court grant equitable rescission, Studio or its designee, Foundation, will continue to own the Transferred Interest in AII and South plus continue to have all right and title to the Transferred Assets of the Specified Campuses.

**COUNT II: Rejection – Declaratory Judgment**

81. Plaintiff incorporates by reference the allegation set forth in paragraphs 1 through 80 hereof as if fully re-written.

82. Pleading in the alternative, and in the event this Court is unwilling or unable to equitably rescind the Contracts as requested, the Receiver requests declarations of the parties' rights thereunder and his ability to Reject the Contracts.

83. Pursuant to both common law and this Court's Order of January 18, 2019 (Order Appointing Receiver, Doc # 8), the Receiver has the right and ability to reject any contract not deemed to be in the interest of creditors of the estate.

84. The Contracts operate to the sole and exclusive benefit of Defendants alone – not the creditors of the receivership estate on the whole.

85. The Receiver accordingly rejects the Contracts, and Studio will suffer no compensable damages as a result.

86. The Receiver asks for a declaration from this Court that he is entitled to reject the Contracts and have the Business Assets of the Receivership Entities returned to Plaintiff.

87. The Receiver further asks for a declaration from this Court that Defendants are entitled to no damages as a result of his rejection of the Contracts.

**COUNT III: Breach of Contract**

88. Plaintiff incorporates by reference the allegations set forth in paragraph 1 through 87 hereof as if fully rewritten herein.

89. Per the TSLA, DCEH agreed to provide Transition Services and such other Managed Services as may be required for Studio to perform its obligations under the MSAs, and in exchange, Studio was to pay DCEH the Transition Service Fee within 10

Business Days after the end of each month of the Term as set forth in the TSLA, which corresponded to the Initial Term as set forth in the MSA.

90. DCEH has provided the requisite services due under the TSLA.

91. Studio has failed, despite due demand from Plaintiff, to pay the full Transition Service Fee.

92. Studio has also failed to set up an account with Microsoft Team Foundation Services per the terms of the TSLA.

93. Studio has therefore breached the Contracts, and Plaintiff expects the breaches to continue as each month's payment due DCEH comes due.

94. As a direct and proximate result of Defendant's breach, DCEH has been damaged in an amount in excess of \$75,000.00.

#### **COUNT IV: Unjust Enrichment**

95. Plaintiff incorporate by reference the allegations set forth in paragraphs 1 through 95 hereof as if fully rewritten.

96. Studio was paid the sums required under the Contracts, but has failed to provide (or pay for the provision of) the services it was required to provide thereunder.

97. Upon information and belief, Plaintiff contends that Studio has not performed any other obligations required under the Contracts.

98. As a result of having been paid, yet providing no service or value whatsoever, Studio has been unjustly enriched in the amount of at least \$2.6 million as of February 15, 2019. That sum will increase for each subsequent month in which DCEH provides services and Defendant fails to pay the requisite sums due.

**WHEREFORE**, Mark E. Dottore, the Court-appointed Receiver and Plaintiff in this action, respectfully demands relief as follows:

1. Upon Count One of the Complaint, with an Order from this Court awarding equitable rescission, thereby putting the parties where they were before the Contracts were entered, voiding the Contracts *ab initio*, requiring Foundation to transfer back to DCEH the Transferred Interests and to return to Plaintiff the Business Assets formerly owned by the Receivership Entities, and to terminate all UCC Financing Statement filed by or on behalf of Studio to perfect its security interest in the Collateral of the entities set forth on the financing statements;

2. In the alternative, upon Count Two of the Complaint, issuing a judgment declaring the Receiver's right to reject the Contracts, return to Plaintiff the Business Assets formerly owned by the Receivership Entities, to terminate the UCC Financing Statements filed by or on behalf of Studio to perfect its security interests in the Collateral of the entities set forth on the financing statements , and further declaring that Defendant is owed nothing as a result of the rejection.

3. Upon Count Three of the Complaint, with an Order from this Court requiring Studio to pay DCEH an amount in excess of \$75,000 due under the TSLA

4. Upon Count Four of the Complaint, with an Order from this Court requiring Studio to pay DCEH an amount in excess of \$75,000 to compensate DCEH for the services it has provided pursuant to the TSLA;

6. Judgment against Defendants awarding investigation costs incurred by the Receiver and reasonable attorneys' fees to the extent permitted by law; and

7. For such other relief as this Court may find just and equitable.

Dated: February 21, 2019

Respectfully submitted,

/s/ Robert T. Glickman

Robert T. Glickman (0059579)

Charles A. Nemer (0009261)

Robert R. Kracht (0025574)

Hugh D. Berkson (0063997)

Nicholas R. Oleski (0095808)

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*Special Counsel for the Receiver*

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff Mark Dottore, Court-appointed Receiver for the Receivership Entities, seeks a trial by jury on all claims herein so triable.

/s/ Robert T. Glickman

Robert T. Glickman (0059579)

*One of the Attorneys for the Receiver*

VERIFICATION

~~CALIFORNIA~~  
STATE OF ~~OHIO~~ )  
~~ALAMEDA~~ ) ss:  
~~CUYAHOGA COUNTY~~ )

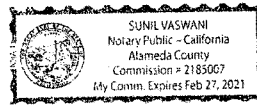
Mark E. Dottore, being duly sworn, deposes and states and follows:

1. I am the Court-appointed Receiver for the Receivership Entities, and I am the Plaintiff in this lawsuit.
2. I have reviewed the Verified Complaint. The facts alleged in the Verified Complaint are true and accurate to the best of my knowledge.

*Mark E. Dottore*  
Mark E. Dottore *Signer at Berkeley CA.*

SWORN TO BEFORE ME, and subscribed in my presence, this 20<sup>th</sup> day of February, 2019.

*SUNIL VASWANI*  
\_\_\_\_\_  
NOTARY PUBLIC





[Additional submissions by Mr. Morelle follow:]

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL STUDENT LEGAL DEFENSE	)	
NETWORK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 18-1673 (TJK)
	)	
UNITED STATES DEPARTMENT OF	)	
EDUCATION,	)	
	)	
Defendant.	)	
_____	)	

**JOINT STATUS REPORT**

Pursuant to the Court’s October 22, 2018 Minute Order, the parties, Plaintiff National Student Legal Defense Network (“NSLDN”) and Defendant U.S. Department of Education (“ED”), by and through undersigned counsel, file this joint status report in this case brought under the Freedom of Information Act (“FOIA”).

Since the parties October 19, 2018 Joint Status Report, the parties have conferred and continue to attempt to reach agreement to prioritize production and to attempt to narrow/potentially resolve the issues in dispute.

On March 21, 2018 NSLDN requested:

- A copy of every letter of credit currently held by the Department that has been posted by, or on behalf of, any institution participating in one or more Title IV, HEA programs” (hereinafter “Request 1”); *and*
- A copy of every communication from the Department wherein the Department requested or demanded an institution to post a letter of credit that is currently held by the Department” (hereinafter “Request 2”).

NSLDN's FOIA Submission also stated that "[t]o the extent this request is unduly burdensome on the Department, . . . NSLDN would be willing to accept a detailed log in lieu of the documents themselves," as long as the log contained certain information.

In late October 2018, the Department posted a detailed log of the letters of credit ("LOCs") held by the Department in 2016. The Department also informed NSLDN that it plans to provide a similar log of LOCs held by the Department in 2017, but would not be able to do so until summer 2019. (It had previously suggested that the 2016 log would be available in summer 2018, but encountered delays in data validation that prevented it from posting the log until late October 2018.) The Department has informed NSLDN that it believes a search for the LOCs currently held by the Department is unduly burdensome in that it cannot be completed within the FOIA statutory deadline. Instead, the Department plans to continue to post detailed logs of the LOCs it holds, but with a two-year delay to complete the search/validation process. The Department has had extended communications with Plaintiff explaining in detail the unique data collection and validation process that underlies the extended search timeframe.

In an effort to prioritize production, NSLDN requested LOCs currently held by the Department from several different entities. The Department responded to NSLDN's request on Wednesday, November 14, 2018 by stating the following:

- Dream Center – no active LOCs are on file. The last three LOCs expired 5/31/18.
- InfiLaw – there are no LOCs on file.
- Bridgepoint – there are no LOCs on file.
- Education Corporation of America – no active LOCs on file. The last LOC on file expired on 3/31/17.
- Career Education Corporation – no active LOCs on file.

The discussions between the parties are ongoing. Accordingly, the parties propose that they file a further Joint Status Report in 30 days, *i.e.*, on or before December 19, 2018.

Dated: November 19, 2018

Respectfully submitted,

JESSIE K. LIU  
United States Attorney  
D.C. Bar #472845

DANIEL VAN HORN  
Chief, Civil Division  
D.C. Bar #924092

By: /s/ Jason T. Cohen  
JASON T. COHEN  
ME Bar #004465  
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Phone: (202) 252-2523  
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*Counsel for Defendant*

/s/ Martha U. Fulford  
Martha U. Fulford, D.C. Bar #1011954  
Robyn K. Bitner, Pro Hac Vice  
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robyn@nsldn.org

*Counsel for Plaintiff*

**ADDENDUM TO TEMPORARY PROVISIONAL PROGRAM PARTICIPATION AGREEMENTS  
("TPPPAs") FOR INSTITUTIONS OWNED BY DREAM CENTER EDUCATIONAL HOLDINGS, LLC  
("DCEH").**

*Whereas*, in October 2017 and January 2018, DCEH (through its subsidiaries) purchased a number of institutions and additional locations of institutions owned by Education Management Corporation ("EDMC") (hereinafter collectively referred to as "the Purchased Schools");

*Whereas*, the Institution executing this Addendum is one of the Purchased Schools;

*Whereas*, DCEH is in the process of closing a number of the Purchased Schools, both main locations and additional locations (hereinafter collectively referred to as "the Closing Schools");

*Whereas*, the Department of Education ("Department") is holding proceeds that it drew down in May 2018 ("Proceeds") from letters of credit ("LOC") that were provided by EDMC while it owned the Purchased Schools;

*Whereas*, in accordance with the terms of the LOC, the Proceeds may be used by the Department for the teach-out of students enrolled at the Closing Schools at the time of their closure;

*Whereas*, DCEH has represented to the Department that it requires the use of some of the Proceeds to provide for an orderly teach-out of students to avoid a precipitous closure of the Closing Schools; and

*Whereas*, the Department seeks to avoid a precipitous closure of the Closing Schools which could result in significant harm to students and taxpayers;

*Whereas*, the Department has determined that to mitigate risks to the taxpayers and students and avoid a precipitous closure of the Closing Schools, it would be reasonable and prudent to provide some of the Proceeds to DCEH to provide for a teach-out of the students at the Closing Schools, including by facilitating the transfer of students to other schools ("Transfer Schools") to complete their programs;

*Whereas*, the Department has determined that the use of the Proceeds will be subject to certain conditions as hereinafter described; and

*Whereas*, DCEH has represented to the Department that it has already expended in excess of \$17,500,000 for teach-out related expenses.

**Therefore**, DCEH, the Institution and the Department agree to the following terms and conditions:

1. DCEH must use the Proceeds provided by the Department only for the teach-out of students enrolled at the Closing Schools. Any students who will not complete their course of study prior to December 31, 2018 must be transferred to a Transfer School as soon as reasonably possible, based upon how quickly the Transfer Schools can accept them.



2. The following items constitute allowable teach-out expenses, subject to the Department's review for reasonableness and compliance with the terms of this Addendum:
  - a. Except as provided in 3 a. below, gross salaries paid to existing (hired on or before July 1, 2018) full and part-time faculty and financial aid officers, Registrar and Registrar staff, the chief academic officer, academic deans and program directors, campus president, career services staff, library staff, academic advisors, student workers, clerical staff providing direct administrative support to faculty and financial aid officers, and security and janitorial staff at the Closing Schools at a rate not to exceed the rate paid to such person prior to July 1, 2018. Except for the chief academic officer, only Closing School employees are eligible for salary payments;
  - b. Gross amount of retention bonuses paid to existing full and part-time employees listed in Item 2.a., not to exceed 25% of that person's current (as of July 1, 2018) salary and to be paid pro-rata during the operation of the Closing Schools or upon completion of that activity;
  - c. Gross salaries paid to newly hired full and part-time faculty or financial aid officers (hired after July 1, 2018) for purposes of facilitating the teach out, at a rate not to exceed the rate paid to the most recently hired equivalent faculty member or financial aid officer in that position;
  - d. Reasonable Transition and Support Services ("Support Services") for students who are enrolled at any of the Closing Schools as of July 1, 2018 ("Current Students"), including but not limited to services to assist Current Students who wish to transfer to other institutions ("Transfer Schools"). The term "Transfer Schools" does not include any of the Purchased Schools, including online programs provided by the Purchased Schools. Gross salaries for employees directly engaged in providing Support Services shall be included in the allowable payments for Support Services. In the aggregate, payments for Support Services may not exceed \$500,000;
  - e. Payments to Transfer Schools for scholarships for Current Students who enroll and start at the Transfer School no later than February 1, 2019 ("Transfer Scholarship"). Transfer Scholarship payments may not exceed \$5,000 per student unless the difference in the costs for tuition and fees between the Closing School and the Transfer School are greater than \$5,000 for the payment period, in which case the Transfer Scholarship payment may be the smaller of the difference between the tuition and fee charges or \$7,500. Transfer Scholarship payments are to be applied to tuition and fee charges before any Title IV funds for those students, and other than enrolling and starting a program at a Transfer School, DCEH may not attach any other conditions to these payments, including requiring the student to waive any rights (including rights to a discharge of that student's loans), or requiring the student not disclose the existence or the amount of the payment. DCEH must provide appropriate documentation to support its request for Transfer Scholarship payments, as more fully described below;
  - f. Monthly payments to provide daily transportation ("Transportation Services"), or to reimburse Current Students for reasonable daily transportation costs for any Current Student

who transfers to a Transfer School that is further than 25 miles from that student's current Closing School campus, excluding any Current Student who transfers to a fully online program at a Transfer School ("Transportation Costs"). Gross salaries for employees directly engaged in providing Transportation Services shall be included in the allowable payments for Transportation Costs. Transportation Costs do not include airfare or long distance (exceeding 100 miles) rail fare;

g. DCEH may request funds for other expenses directly related to the teach out by submitting a request therefor pursuant to the Initial Advance, Supplemental Advance, or Additional Funds Request procedures set forth in Items 4 through 11 below. The fact that an expense may not be specifically excluded by this Addendum does not mean that the Department will approve such request;

h. Subject to the restrictions in Item 3.d., lease payments for existing campus real estate, buildings, furniture, fixtures, and equipment for the use of that equipment and facilities for use of the premises and any related furniture, fixtures and equipment during the months of August, September and October 2018 only. DCEH may not use funds for rent for any period prior to or after August, September and October 2018. Expenses for any equipment repairs required during that period may be reimbursed only on a case by case basis.

3. In addition to the exclusions set forth above, the Department has determined that the following expenses do not constitute allowable teach-out expenses:

a. Except as listed in Item 2.a. salaries paid to DCEH officials not directly employed by the Closing Schools, salaries for senior officials at the Closing Schools who are scheduled to receive severance packages equivalent to, or greater than, 3 months' salary;

b. Salaries paid to officials of DCEH or its subsidiaries and affiliates not directly employed by the Closing Schools;

c. Any payments to any Board members;

d. Severance payments to any personnel;

d. Payments to any landlord (not including the lease payment above in Item 2.h.), vendor, service provider, legal counsel, or similar party to resolve any dispute, pay any contract penalties or early termination charges, or to buy-out of any leases, contracts, or other arrangements;

e. Any contribution to corporate overhead or general and administrative expenses, including but not limited to taxes, insurance, depreciation, interest, legal, marketing, admissions, accounting, etc.;

f. Scholarships or tuition reduction payments or credits for students who continue to be enrolled at any of the Purchased Schools, whether on campus or online;

- g. Payments to outside parties for services other than directly assisting students in a teach-out or transfer to another institution;
  - h. Payments for any incentive-based compensation for employees including bonuses (except as specifically described in Item 2.b. above);
4. No later than 5 business days following the execution of this Addendum by DCEH, DCEH will provide an executed letter of engagement of a certified public accountant ("CPA"). The CPA will be responsible for reviewing the Initial Advance Submission, any Supplemental Advance Submission and the Additional Funds Submissions (as defined below and hereinafter collectively referred to as "the Submissions"). The letter of engagement shall incorporate by reference the terms and conditions of this Addendum, and the CPA shall acknowledge therein that the CPA is engaged solely for the purpose of reviewing and certifying allowable costs in the Submissions for the benefit of and to assist the Department; that the Department is an express third-party beneficiary of the engagement; that there is no accountant or other professional, privileged, or fiduciary relationship for the benefit of DCEH or the Purchased Schools; and that the CPA has had no prior or intended future relationship with DCEH, the Purchased Schools, or any affiliated entities or persons. All correspondence between the CPA and DCEH, and all documents and CPA workpapers will be made available for inspection and copying by the Department upon request. Prior to engaging the CPA, DCEH shall secure the Department's approval of the CPA. The cost of the CPA shall be borne solely by DCEH, and shall not be included as a cost item in any of the Submissions.
  5. DCEH shall deliver copies of each Submission to the Department and to the CPA. The Submission shall include a certification from DCEH that the expenses identified on the statement are accurate and complete. The Department and the CPA will jointly determine what kinds of back-up documentation will be required in support of the Submissions. With regard to any request for funds for Transfer Scholarships, the back-up documentation shall include the name and identification number of each student, along with verification that the student has accepted the Transfer Scholarship offer from DCEH, and has enrolled at the Transfer School and begun attendance. For any Transfer Scholarship in excess of \$5,000, the Submission must include support for any amount in excess of \$5,000. This information shall be provided separately from the Student Rosters required in Appendix A.
  6. During the course of its review of the Submissions, the CPA may, in the exercise of its professional judgment, request different or additional documentation from DCEH. Within 10 days following the CPA's receipt of the Submissions, the CPA shall certify the allowable costs determined in accordance with Items 1-3 above. However, the Department's determination to make any payments is within its sole discretion, and the Department is not bound by the CPA's certification of the allowable costs. The CPA shall also certify that DCEH is current on its payments to the CPA as the terms for those payments are set forth in the engagement letter

between DCEH and the CPA, or as thereafter modified by agreement of those two parties. The allowable costs certification and the payment certification are hereinafter jointly referred to as "the CPA Certification." If at any time DCEH is not current on its payments to the CPA, or the CPA otherwise fails or refuses to perform its duties in accordance with the terms of this Addendum, the Department will cease any further release of funds under this Addendum, unless such failure is cured to the Department's satisfaction.

7. The Department will provide DCEH with an Initial Advance in an amount up to \$10,000,000 ("Initial Advance"). No later than the date that DCEH delivers to the Department the executed originals of this Addendum by each of the Purchased Schools and DCEH, DCEH shall submit to the Department and the CPA the necessary back-up documentation to establish the actual use of the Initial Advance for the purposes and within the limitations set forth in Items 1 -3 above, and must include a certificate of that compliance signed by an authorized representative of DCEH and a representative of any individual school that is the beneficiary of the Initial Advance ("Initial Advance Submission"). Release of the Initial Advance will be contingent upon the Department's counter-signature on the Addendums and review of the Initial Advance Submission submitted by DCEH, and the Department's satisfaction that the expenses are for allowable costs. The Department will notify DCEH of its approval/partial approval/disapproval of the Initial Advance within 5 business days of its receipt of the Initial Advance Submission ("Initial Advance Notification"). The Initial Advance (or such portion of which is approved) shall be paid within 5 business days following the Department's receipt of the executed Addendums from DCEH, or the Department's issuance of the Initial Advance Notification, whichever is later. The Department may provide a Supplemental Advance within 7 business days of transmission of the Initial Advance to account for the difference between the amount of initial expenses reported by DCEH (not to exceed \$17,513,457) and the amount paid in the Initial Advance. Payment of the Supplemental Advance is subject to any additional Departmental review of the Initial Advance Submission and the CPA Certification. DCEH's representation that it and/or the Closing Schools have already expended in excess of \$17.5 million in teach-out expenses is a material representation upon which the Department has relied in agreeing to pay the Initial Advance.
8. DCEH may submit requests for additional funds after payment of the Initial Advance and, if applicable, Supplemental Advance. Payments for additional funds will be made according to the following terms and schedule:
  - a. The request for additional funds must be supported by documentation to establish that DCEH has expended funds in addition to the Initial Advance for the purposes and within the limitations set forth in Items 1 - 3 above, and must include a certificate of that compliance signed by an authorized representative of DCEH and a representative of any individual school that will be the beneficiary of the additional funds ("Additional Funds Submission");



- b. The Department will notify DCEH of its approval/partial approval/disapproval of the Additional Funds Submission within 5 business days following the Department's receipt of the CPA Certification ("Additional Funds Notification"). The Additional Funds Submission (or such portion of which is approved) shall be paid within 5 business days following the Department's issuance of the Additional Funds Notification;
  - c. DCEH may not submit an Additional Funds Submission more often than once every 14 calendar days, and no individual Additional Funds Submission may exceed \$4,000,000;
  - d. The final Additional Funds Submission shall be submitted no later than March 30, 2019;
  - e. The Department may withhold any approved final payment pending receipt of close-out audits for the Closing Schools; and
  - f. The Department's decision to approve/deny/partially approve any Additional Funds Submission is final, and is not subject to appeal or reconsideration; however, the Department, in its sole discretion, may request additional or different documentation in regard to all or any portion of the Additional Funds Submission.
9. Payments made under this Addendum by the Department to DCEH for the benefit of the Closing Schools shall not exceed \$50,000,000 in the aggregate, to include the Initial Advance.
10. DCEH acknowledges that any funds advanced or paid to DCEH in accordance with the terms of this Addendum are part of the Proceeds from the LOC that the Department drew down in May 2018. In the event the Department is required by court order to return all or any portion of the Proceeds, or is adjudged liable for damages as a result of the payments made under this Addendum, upon demand from the Department, DCEH and the Purchased Schools must pay the Department an amount equal to the funds advanced or paid by the Department to DCEH. This payment must be made within 30 calendar days of the Department's demand, without offset or other reduction. DCEH and the Purchased Schools agree that the demand may also include a demand for reimbursement to the Department for any costs and expenses related to the Department's defense of any action filed to seek return of the Proceeds advanced or paid to DCEH or the Closing Schools. A failure to timely make the payment and/or the reimbursement shall constitute a liability owed to the Department by DCEH and the Purchased Schools.
11. In addition to the back-up information required to support the Submissions, DCEH and the Closing Schools shall provide additional reports and information to the Department as requested by the Department. At a minimum, that information will include the items set forth in Appendix A. A failure to timely submit any information requested by the Department, whether pursuant to the schedule in Appendix A or requested separately, will constitute a material breach of this Addendum.
12. DCEH and its campus leaders must provide students with accurate information about the teach-out plan, the planned date of the campus closure, the accreditation status of each campus, all education and job placement services available to students during and after the campus closure, and information about how to access student records after the campus closes.

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- 13. The Department reserves the right to cancel this Addendum in writing at any time, without any notice, and for any reason. The Department will notify DCEH within a reasonable time if it exercises its right to cancel.
- 14. This Addendum supplements and does not modify or supersede the TPPA entered into between the Institution and the Department. The Institution agrees that all references herein to "the Purchased Schools" shall include the Institution.
- 15. For any time period herein that refers to "calendar days," if the day of performance falls on a Saturday, Sunday or legal holiday, the time for performance continues to run until the next business day.

IN WITNESS WHEREOF

The parties hereto have caused this Addendum to be executed by their duly authorized representatives, effective the date of the Department's countersignature below.

South University  
 By: [Signature]  
 Title: Interim Chancellor  
 Date: August 17, 2018

South University  
 By: [Signature]  
 Title: Manager  
 Date: 10 AUGUST 18

Dream Center Educational Holdings, LLC  
 By: [Signature]  
 Title: Chairman/Chief Development Officer  
 Date: 16 AUGUST 18

The owners of the institution agree to be jointly and severally liable for the performance of the Institution of its obligations under this Addendum.

United States Department of Education

By: *Dina Arbones*  
For the Secretary  
Title: *Principal Deputy Under Secretary delegated to perform  
the duties of Under Secretary*  
Date: *8/20/18*

**Appendix A**

The following documents must be submitted to the Department (and other entities as indicated below) by DCEH and the Closing Schools on the schedule set forth below:

1	All executed teach-out plans, teach-out agreements, transfer agreements, articulation agreements, and document retention plans.	Department Accreditors  State higher education authorizing agencies	Upon DCEH's delivery of the executed Addendum to the Department, and beginning on September 15 <sup>th</sup> , updated on the 15 <sup>th</sup> and 30 <sup>th</sup> of each month.
2	A roster of all students enrolled at the Closing Schools as of July 1, 2018. The roster must contain the following information: student name, 4 digit SSN, DOB, student address (divided into 4 fields by street address, city, state & zip code), telephone number, email address, program of study, current courses, educational delivery method (on-campus only, online only, or both on-campus and online), program start date, anticipated completion date, current enrollment status (withdrawn, leave of absence, campus teach out, transfer to another school), 8 digit OPEID, educational location (divided into 4 fields by street address, city, state & zip code).  <b>Note: this information must be submitted in Microsoft Excel format and sent by encrypted electronic transmission</b>	Department	Upon DCEH's delivery of the executed Addendum to the Department, and beginning on September 15 <sup>th</sup> , updated on the 15 <sup>th</sup> and 30 <sup>th</sup> day of every month for the preceding 15 day period.  These rosters must be updated to indicate what students have changed their enrollment status, and for those that have transferred to other schools, the identification of those schools.
3	A roster of all students who will complete their program of study at a Closing School (i.e., students who are	Department	Upon DCEH's delivery of the executed Addendum to the

	<p>not transferring), with the anticipated completion date. The roster should include: student name, 4 digit SSN, DOB, student address (divided into 4 fields by street address, city, state &amp; zip code), telephone number, email address, program of study, current courses, educational delivery method (on-campus only or both on-campus and online), program start date, anticipated completion date, 8 digit OPEID, educational location (divided into 4 fields by street address, city, state &amp; zip code).</p> <p><b>Note: this information may be included in the spreadsheet required by Item 2 above and should be transmitted in the same format.</b></p>		<p>Department, and beginning on September 15<sup>th</sup>, updated on the 15<sup>th</sup> and 30<sup>th</sup> day of every month for the preceding 15 day period.</p> <p>These rosters must be updated to indicate what students have changed their enrollment status, and for those that have transferred to other schools, the identification of the Transfer School(s).</p>
4.	<p>A roster of all students who have accepted the Transfer Scholarship and copies of all transfer agreements entered into with such students.</p> <p><b>Note: this is in addition to any information required by the CPA or the Department to provide back-up for any Submission requesting funds for Transfer Scholarships.</b></p>	Department	<p>Upon DCEH's delivery of the executed Addendum to the Department, and beginning on September 15<sup>th</sup>, updated on the 15<sup>th</sup> and 30<sup>th</sup> day of every month for the preceding period.</p>
5.	<p>A copy of all communications provided to students with information about the teach-out plan, the planned date of the campus closure, the accreditation status of each campus, all education and job placement services available to students during and after the campus closure, and information about how to access</p>	Department	<p>Upon DCEH's delivery of the executed Addendum to the Department, and beginning on September 15<sup>th</sup>, updated on the 15<sup>th</sup> and 30<sup>th</sup> day of every month for the</p>

	student records after the campus closes.		preceding period.
6.	A roster of all transfer fairs, including the date and time when the fair was held or will be held, the schools that had or will participate, and the number of students who attended.	Department	Upon DCEH's delivery of the executed Addendum to the Department, and beginning on September 15 <sup>th</sup> , updated on the 15 <sup>th</sup> and 30 <sup>th</sup> day of every month for the preceding period.
7.	A copy of the rosters submitted to the Department pursuant to Items 2-4 above <i>with all personally identifiable information redacted.</i>	Accreditors State higher education authorizing agencies	Upon DCEH's delivery of the executed Addendum to the Department, and beginning on September 15 <sup>th</sup> , on the 15 <sup>th</sup> and 30 <sup>th</sup> day of every month for the preceding period.

[Questions submitted for the record and their responses follow:]

MAJORITY MEMBERS:  
ROBERT C. "BOBBY" SCOTT, VIRGINIA  
Chairman

SUSAN A. DAVIS, CALIFORNIA  
RASHI M. DRUJANYA, ARIZONA  
JOE COURTHNEY, CONNECTICUT  
MARCIA L. FUDGE, OHIO  
GREGORIO MILLI CAMACHO SABLAN,  
NORTHERN MARIANA ISLANDS  
FREDERICA S. WILSON, FLORIDA  
SUZANNE BONAMICI, OREGON  
MARY TAKANO, CALIFORNIA  
ALMA S. ADAMS, NORTH CAROLINA  
MARK DESALVIERE, CALIFORNIA  
DONALD NORCROSS, NEW JERSEY  
PRAMILA JAYAPAL, WASHINGTON  
JOSEPH D. MORELLE, NEW YORK  
SUSAN WILD, PENNSYLVANIA  
JOHN HARPER, CALIFORNIA  
LUCY MCBEATH, GEORGIA  
KM SCHRIER, WASHINGTON  
LAUREN UNDERWOOD, ILLINOIS  
JAHANA HAYES, CONNECTICUT  
DONNA E. SHALALA, FLORIDA  
ANDY LEVIN, MICHIGAN  
EHRN SMAR, MINNESOTA  
DAVID J. TRONE, MARYLAND  
HALEY M. STEVENS, MICHIGAN  
SUSIE LEE, NEVADA  
LORI TRAHAN, MASSACHUSETTS  
JONQUIN CASTRO, TEXAS



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

April 29, 2019

MINORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA  
Ranking Member  
DAVID P. ROE, TENNESSEE  
GLENN THOMPSON, PENNSYLVANIA  
TIM WALBERG, MICHIGAN  
BRETT GUTHRIE, KENTUCKY  
BRADLEY BYRNE, ALABAMA  
GLENN GROTHMAN, WISCONSIN  
ELISE M. STEFANIK, NEW YORK  
RICHIE LEE, GEORGIA  
FRANCIS ROONEY, FLORIDA  
LLOYD SMUCKER, PENNSYLVANIA  
JIM BANKS, INDIANA  
MARK WALKER, NORTH CAROLINA  
JAMES COMER, KENTUCKY  
BEN CLINE, VIRGINIA  
RUSSELL FALCHER, IDAHO  
VAN TAYLOR, TEXAS  
STEVEN PATTON, KANSAS  
RON WRIGHT, TEXAS  
DANIEL MEUSER, PENNSYLVANIA  
WILLIAM R. TRIMMINS, IV, SOUTH CAROLINA  
DUSTY JOHNSON, SOUTH DAKOTA

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

Dear Secretary DeVos:

I would like to thank you for testifying at the April 10, 2019, Committee on Education and Labor hearing on *"Examining the Policies and Priorities of the U.S. Department of Education."*

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Monday, May 13, 2019, for inclusion in the official hearing record. Your responses should be sent to Jacque Mosley of the Committee staff. She can be contacted at the main number 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT  
Chairman

Enclosure

Committee on Education and Labor - Full Committee Hearing:  
"Examining the Policies and Priorities of the U.S. Department of Education."  
Wednesday, April 10, 2019  
9:00 a.m.

**Chairman Robert C. "Bobby" Scott (VA)**

1. Secretary DeVos, the Rehabilitative Services Administration (RSA) has the responsibility of enforcing and overseeing the implementation of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA) in 2014 and its regulations finalized in 2016. The amendments made in 2014 included a focus on employment for individuals with disabilities in competitive, integrated settings. Congress's intent of WIOA was to preference competitive, integrated settings and focus on improving workforce opportunities for individuals with disabilities aligned with the goals of the Americans with Disabilities Act and Olmstead Supreme Court decision. Despite a report citing that all state vocational rehabilitation agencies are using a case-by-case analysis to review employment decisions, there are reports from the field of inconsistencies with the requirement for a case-by-case analysis, as required in 29 USC 722 (d).
  - a. What support and guidance is RSA providing to vocational rehabilitation agencies on ensuring a case-by-case analysis is provided for employment decisions?
  - b. What enforcement procedures is RSA employing to ensure all aspects of WIOA and its regulations are followed and individuals with disabilities are provided competitive, integrated employment?
2. Secretary DeVos, the Office of Special Education Programs (OSEP) underwent a change in the way it reviewed data and oversaw state implementation of IDEA in 2014, shifting to the Results Driven Accountability framework (RDA). The framework focuses on performance plans and reports, determinations, and monitoring and support for states. Given the framework has now been in place for several years, please provide an update on progress and how the shift in the framework has changed outcomes for students.
  - a. In particular, is the framework allowing OSEP to catch problems in states sooner? For example, the problem with the Texas special education cap, is the framework allowing for quicker identification of such issues?
  - b. When a state is identified as low performing, what are the supports being provided? Please describe some examples of success of evidence-based supports provided to states and how those improved outcomes.
  - c. Has the attrition and low staff numbers at the Department of Education impacted staff capacity to carry out RDA?
3. In September 2016, a Minnesota court found that the Minnesota School of Business and Globe University had engaged in consumer fraud and deceptive practices due to misrepresentation. After a series of events, including the revocation of state authorization, the Department of Education withdrew Title IV eligibility for these institutions. Between



September 2016, when the school was found guilty of fraud, and December 2016, when the Department of Education withdrew Title IV participation, thousands of students withdrew from the school. However, the main campuses remained open until September 2017. Given the Secretary's authority to extend the 120-day look-back period for closed school loan discharge, the Minnesota Attorney General Swanson sent you a letter on January 4, 2019 urging you to extend the look-back window to September 2016 when the school would found to have defrauded students.

- a. Has the Department considered extending the look-back period? Why or why not?
  - b. If the Department has considered extending the look-back period, what dates are being considered and why?
  - c. When does the Department intend to have a final determination on the official look-back period for these schools?
  - d. Will the Department convey its ultimate decision with the Minnesota Attorney General's office?
4. On April 9, 2019, Politico reported that the Office of Federal Student Aid was reorganizing, including reducing the number of senior officials who report directly to the head office. The reporting announced that the plan was first developed last October and that DeVos had only recently approved the plan.
- a. Please provide a copy of the organizational and staffing map at FSA and include staffing levels for each team.
  - b. In narrative form, please explain the main organizational changes.
  - c. Who was the lead staff responsible for development of the plan?
  - d. The article stated that the executive committee will consist of four new deputy chief operating officers and other staff. Please provide the role of the executive committee, the names and titles of each individual on the committee, and a brief description of each individual's position.
  - e. Will FSA be hiring additional staff? If so, how will the new staff be incorporated into the different teams?
5. Approximately half of Pell eligible FAFSA applicants are selected for verification annually according to the End-of-Year Pell Grant reports for both 2015-16 and 2016-17. According to analysis by the National College Access Network, students selected for verification are less likely to ultimately receive a Pell Grant—56 percent of Pell eligible FAFSA filers who are selected for verification receive a Pell Grant, compared to 81 percent of Pell eligible FAFSA filers not selected for verification. The goal of FAFSA verification is to confirm that students are indeed low-income. In order to ascertain whether the significant burden placed on students is warranted, please send:
- a. Among all applicants that completed the verification process in the most recent year for which data are available, the percentage of applications that resulted in a change in expected family contribution, and the percentage of applications that resulted in a change in Pell eligibility.
  - b. The frequency of inaccurate self-reporting of non-filing status (i.e. the share of self-reported non-filers who had actually filed tax returns) for both the 2017-18 and 2018-19 award years listed separately.

- c. Among all applicants who misreported non-filing status, the share of applicants that experienced changes in federal student aid eligibility after their correct filing status was reported, and among those applicants that experienced a change in eligibility, the average change in estimated family contribution and Pell Grant eligibility.
  - d. Any analysis the Department has conducted on the impact of the elimination of the 30 percent verification selection cap, including any analysis related to the change in reported burden on students and institutions, or on the integrity of Title IV aid programs.
6. The partnership between the U.S. Department of Education and the Internal Revenue Service is necessary and crucial to the execution of the federal need-based aid program. Changes in the tax code, forms, and technology are all currently affecting students' ability to seamlessly navigate the financial aid application process.
- e. Is there currently a plan in place to optimize the data retrieval tool (DRT) webpage for mobile devices and, if so, when will this optimization occur?
  - f. Which FAFSA fields formerly transferred through the DRT solely from IRS Form 1040 are now, or are planned to be, transferred from tax schedules?
  - g. Will the Department request IRS to allow tax transcripts be sent to authorized third parties, including institutions of higher education and college access programs?
  - h. Please describe any past, current, or planned efforts by the U.S. Department of Education to explore secure data sharing options with the IRS or other federal agencies that have the potential to expedite the verification process.
7. Secretary DeVos, you failed to agree to baseline bargaining rules with the American Federation of Government Employees and unilaterally imposed a collective bargaining agreement on the union. These actions were later determined by the Federal Labor Relations Authority to have been unlawful. The Department eliminated the amount of "official time" union representatives have at the agency and eliminated the Department's requirement to consult with the union before making an agency-wide decision. Were you aware that these terms violated the Federal-Service Labor Management Relations Statute?
8. Secretary DeVos, the union has filed an unfair labor practice charge regarding the Department's collective bargaining agreement. Federal Labor Relations Authority investigators have found sufficient evidence in support of that charge. A formal complaint has not yet been issued by the general counsel of the FLRA because the Trump Administration failed to nominate a general counsel for 495 days, effectively undermining agency operations. Considering those findings, when can the American Federation of Government Employees expect you to return to the bargaining table as you are required to do under the law and schedule an initial meeting?

9. Secretary Devos, we understand the Department has recently undergone a reorganization and it refused to bargain with the Union over the impact this reorganization would have on your Agency's employees. This has resulted in employees being moved against their will to positions for which they have not received necessary training or obtained the proper certifications. This means, for example, that employees cannot correctly advise stakeholders about laws and regulations since the Department has failed to properly train employees. You are expected to communicate with the Union about the reorganization and you are required to do so in good faith.
  - a. Why did you refuse to talk to the Union after they requested to bargain with the agency over this reorganization which would have addressed matters such as employee training?
  - b. How are you working with the Federation to train employees for an effective and efficient implementation of the reorganization?
  - c. When should the Union should expect to hear from your office to discuss this matter?
  
10. The Office for Civil Rights announced in November that it was revising the Case Processing Manual, and among the specific changes was a new requirement that, "Although OCR does not have jurisdiction to enforce the First Amendment to the U.S. Constitution, as a threshold issue and throughout the processing of the complaint, OCR interprets its statutes and regulations consistent with the requirements of the First Amendment, and all actions taken by OCR must comport with First Amendment principles. OCR will not interpret any statute or regulation to impinge upon rights protected under the First Amendment or to require recipients to encroach upon the exercise of such rights."
  - a. How have the Office for Civil Rights, field officers, and employees implemented this requirement since its inclusion in the Case Processing Manual? Has it resulted in investigations being abandoned or significantly affected in some way, and if so, can you describe how?
  - b. How have OCR staff been trained to implement the new Case Processing Manual requirement on the First Amendment? Have any existing staff been reassigned to oversee implementation?
  - c. How does this requirement, and specifically the observation that OCR does not have jurisdiction to enforce the First Amendment, align with the recent Executive Order directing you to "take appropriate steps, in a manner consistent with applicable law, including the First Amendment, to ensure institutions that receive Federal research or education grants promote free inquiry?" Will this EO make additional requirements for how OCR investigates or resolves cases?
  
11. In September, Assistant Secretary for Civil Rights Kenneth Marcus indicated that the Office for Civil Rights is using a definition of anti-Semitism also used by the Department of State. This definition characterizes as anti-Semitic many constitutionally protected statements about Israel, including accusing people of "being more loyal to Israel" than to

the United States, applying a “double standard for Israel,” or “denying the Jewish people their right to self-determination.”

- a. For the purposes of civil rights enforcement and upholding students' First Amendment rights, is the Department of Education officially defining anti-Semitism in the manner the Department of State does? When did the department formally adopt this definition, and how did it do so?
  - b. In investigating religious discrimination complaints, how does the department distinguish between anti-Semitism and criticism of Israel, which is protected by the First Amendment?
  - c. How is the department ensuring that protecting students from anti-Semitism is not chilling students' First Amendment-protected right to criticize the Israeli government?
  - d. How many complaints has the department received involving anti-Semitism? Of those, how many have involved criticism of or commentary on Israel?
12. The president recently signed an executive order on “Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities,” which tells public universities to abide by the First Amendment, as they are already required to do, and private universities to abide by their existing policies.
- a. How will the Education Department implement President Trump’s executive order?
    - i. Will there be conditions in new grants?
    - ii. Will the order apply to grants that have already been made? If so, how?
  - b. To what specific funding will the order apply?
  - c. Given that public universities must already abide by the First Amendment, what will be required of them, if anything, that is different from current practice when accepting grant money?
  - d. For private universities, will the condition apply to the activities of the entire university or only to the grant funds?
  - e. What will the enforcement process be, if any?
    - i. For public universities?
    - ii. For private universities?
  - f. What will penalties be, if any, for failure to comply?
13. The Department’s budget proposal includes \$100 million for a new School Safety State Grant program, which you intend to help states “develop and implement interventions that enhance school safety,” including recommendations from the federal commission on school safety.
- a. Given that the commission’s final report recommends that districts and schools establish threat assessment teams, and establish central suspicious activity reporting systems, how would you ensure that these grants would not fund efforts that put students with disabilities, whose behavior may be erroneously perceived to be dangerous, at risk?

- b. How would you establish safeguards in these grants so that students' health records is not inappropriately shared, in violation of FERPA or HIPAA, or that schools do not take advantage of these laws' exceptions in a way that puts students with disabilities at risk of being inappropriately disciplined, pushed out of school, or endangered?
  - c. Will you commit to ensuring that states and districts receive clear instructions to maintain complete separation between any threat assessment team and the Individualized Education Plan process, given that the latter is supposed to focus exclusively on the rights and educational needs of the student with a disability? Will you commit to maintaining the integrity of the IEP process, by prohibiting data sharing or interactions between the threat assessment team and the IEP team?
14. On the Department of Education's website, you've referred to the Education Freedom Scholarship program, the administration's proposed \$5 billion federal tax credit that could be used for private school education, as "a vital opportunity states can seize to empower children with disabilities and their families."
- a. Will the schools that receive this funding be required to comply with the Individuals with Disabilities Education Act (IDEA)?
  - b. Is it not the case that these children would have significantly fewer educational rights within these private school settings than they would in a public school setting under IDEA?
15. Please provide a full-time equivalent breakdown of employees per each formula grant program authorized by the Elementary and Secondary Education Act. Please provide such breakdown for of June, 2017 as compared to April, 2019.
16. You have claimed that the goal of your proposed teacher vouchers is to improve teacher professional development. ESSA included a more rigorous definition requiring professional development to be "sustained (not stand-alone), intensive, collaborative, job-embedded, data-driven, and classroom-focused." LEAs are responding to the new evidence requirements under ESSA by reimagining their PD programs, shifting to cohort-based, job-embedded model. Wouldn't your proposal promote precisely what ESSA discourages: one-off/single day workshops that run counter to what has been shown to be effective professional development?
17. Please describe the strategies in state plans that move the needle on student achievement? What innovative strategies have you seen states propose?
18. How will the Department support states and districts to implement evidenced-based school improvement strategies?

19. The Department released draft guidance last month for local and state educational agencies on drafting and publishing report cards, including information about per pupil expenditures. What are the Department's plans to follow-up on the guidance to make sure states are complying with the ESSA provisions regarding specific information to be included in state accountability systems and report cards?
20. In 2014, a Department of Education study estimated that it would cost \$197 billion to bring all public schools into good condition.<sup>1</sup> Please describe how the federal government plays a role in funding the rebuilding of our nation's public schools to get them to at least a "good condition"?
21. Puerto Rico received \$589 million provided by the U.S. Department of Education for recovery from Hurricane Maria, but the funding has not made it into the classrooms and schools.<sup>2</sup> As a result, there is still mold and leaky roofs, and books and technology supplies have not been replaced. What is the Department doing to ensure that this funding actually goes to restart school operations in schools that were hit by Hurricane Maria and not going to privatization efforts?
22. In December 2018, ED and DOJ withdrew a January 8, 2014, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline and a related package of resources, asserting "that the Guidance and associated documents advance policy preferences and positions not required or contemplated by Title IV or Title VI." Without the guidance, what is the Department doing to enforce Title VI of the Civil Rights Act of 1964 to ensure that students of color are not denied equal access to educational opportunities due to school discipline policies or practices that have an unjustifiable discriminatory effect or disparate impact of students of color?
23. When the Office for Civil Rights investigates complaints alleging racial discrimination under Title VI based on both intentional discrimination and disparate impact as allowed under Title VI and its implementing regulations, do your investigators conduct a disparate impact legal analysis?
24. Research shows that implicit bias, or subtle, subconscious beliefs that result in stereotypes, negatively impacts educational attainment for students of color – teachers have lower expectations for black students, which affects how well those students do in school. Implicit bias also exacerbates disparities in school discipline – teachers automatically draw more negative conclusions regarding the same behaviors exhibited by Black students than by a white students, leading to more negative disciplinary consequences for Black students.

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<sup>1</sup> <https://nces.ed.gov/pubs2014/2014022.pdf>

<sup>2</sup> <https://www.ed.gov/news/press-releases/secretary-devos-announces-new-federal-disaster-assistance-california-puerto-rico-and-texas>

What role do you think the Department should play to address this racially-biased disciplinary practices?

25. The Department of Education has scaled back and narrowed its civil rights enforcement, abandoning the systemic approach to investigating and resolving civil rights violations. Instead, field investigators are now instructed to investigate “systematic” or “class-action” issues only when they are raised directly in a complaint. If civil rights complaints are treated as isolated incidents, patterns of discrimination will remain concealed and remedies will be incomplete. Do you believe that a systemic approach to civil rights in education is necessary to fully enforce civil rights laws and remedy unlawful discrimination and harassment? Are there certain types of civil rights claims that should automatically trigger a systemic investigation to resolve whether there is a pattern of discrimination?
26. As part of its general rollback of civil rights enforcement in public schools, the Department has specifically reduced protections for transgender students. This includes withdrawing guidance (jointly with DOJ) providing that Title IX requires public schools to allow students to use the restroom that corresponds with gender identity. Has the Department stopped investigating claims that students are being discriminated against for being transgender?
27. How does the Department protect transgender students that face harassment or discrimination because of their gender identity, like been denied access to bathrooms at school?

**Rep. Marcia L. Fudge (OH)**

1. Secretary Betsy DeVos. Secretary DeVos, per your testimony on Wednesday, April 10, 2019, in response to Congresswoman Marcia L. Fudge’s assertion that “Alabama and Florida have state tax-credit programs that have shown no improvement in academic achievement”, you stated: “I’m aware of the programs and you are wrong, they have shown improvement for students.” Secretary DeVos, please produce peer-reviewed journals or studies to justify your assertion that the programs in question improve student achievement. Specifically, please provide data showing the impact of state tax-credit programs on students’ academic grades, standardized test scores, and other measures of student educational outcomes.
2. Secretary DeVos. Secretary DeVos, in February 2018, the Office of Personnel Management (OPM) released the “Federal Equal Opportunity Recruitment Program Report to Congress”, which provided statistical data on fiscal year 2016 employment in the Federal workforce. Secretary DeVos, please describe how diversity and inclusion has factored into the Department’s reorganization and attrition plans.

**Rep. Gregorio Kilili Camacho Sablan (MP)**

1. Secretary DeVos, what is the Department of Education's strategy to ensure that states carry out their commitments to ESSA's equity-focused policies as they have said they would do in their state plan? In Michigan, the state committed to identifying schools for additional targeted support every three years. This is described on page 44 of the plan you approved. However, the Michigan Department of Education has apparently changed its policy and now plans to identify these schools every six years. This not only violates the state's own plan, it also violates the law. ESSA requires these schools to be identified no less frequently than once every three years. Students should not have to languish for 6 years before being identified for support. How is it compliant with ESSA for schools to be identified for additional targeted support only once every six years?
2. Secretary DeVos, ESSA requires states to identify schools that need support. And it requires districts to develop and implement a comprehensive support and improvement plans for those schools. As a part of those plans, districts must identify and address resource inequities in these schools. This is critical because, so often, schools that are underperforming are also under-resourced. How is the Department of Education ensuring that school districts identify and address resource inequities to support school improvement, as required under the law?
3. Secretary DeVos, when you spoke to this year's CCSSO conference, you encouraged states to seek waivers from ESSA's core requirements. Yet you've previously told the Committee that you're "implementing the law as written." While the law grants you waiver authority, Congress did not intend for the law's waiver authority be broadly used to circumvent core aspects of ESSA's bipartisan agreement. Can you commit that you will not misuse the law's limited waiver authority to circumvent core requirements and undermine Congressional intent?

**Rep. Frederica S. Wilson (FL)**

1. Secretary DeVos, are you aware of the recent, widely publicized EdBuild study that found school districts that predominantly serve students of color received \$23 billion less in funding than mostly white school districts, despite serving the same number of students?
  - a. Do you find this statistic troubling and what specific actions has your department taken to increase targeted funding to school districts serving predominantly low-income students of color?
  - b. What is the federal role in supporting low-income districts to deliver a quality public education for every child when states refuse to provide the necessary resources?
2. Secretary DeVos, as I'm sure you are aware, it has traditionally been the role of the federal government to help close such gaps. Because public school financing continues to be so inequitable, federal funds are targeted to the highest poverty areas. That means that



not all districts are equally reliant on federal dollars. Your budget proposed new spending on charters and private schools but would cut 12% of the overall education budget and \$5.1 billion in K-12 public education programs. This includes the elimination of Title IV-A Grants, which support the education of the neediest and, often, lowest-income student populations. These grants facilitate equity and diversity training, and support social emotional learning, violence prevention, trauma-informed classroom management, and safe and supportive learning environments. Cutting Title IV- A grants would leave needy school districts with even fewer resources and would be most felt by already underserved student populations.

- a. How do you defend this proposed cut in light of the existing \$23 billion racial funding gap?
- b. I assume that your department has conducted a rigorous evaluation of Title IV-A grant uses for you to reach that conclusion. Is that true and can you share that district-level data with Congress?
- c. Public schools, which you are charged with defending, are severely underfunded, and as I just highlighted, low-income, majority-minority districts have the greatest funding needs. Congress authorized Title IV-A grants to promote a safe, well-rounded education for all students. You are directly undermining this goal. Do you believe it is your departments' duty to help close the stark funding inequities of public school districts?
- d. You have done nothing to support Title IV-A's implementation or properly evaluate its effectiveness even though we've heard from educators all over the country on what it means for their students. I've heard from educators in my community who are deeply concerned by your proposed cuts. In my district alone, Title IV-A funds are being used to provide the following services:
  - youth Mental Health Training to 2500 staff;
  - academic and social-emotional support for homeless students;
  - FAFSA Completion workshops for students and parents;
  - parent workshops on college and career readiness;
  - and the professional development of teachers to be more responsive to the needs of diverse student populations.

Can you name specific actions your department has taken to increase targeted funding to school districts serving predominantly low-income students of color?

3. Secretary DeVos, recently Florida's Gov. Ron DeSantis stated that when it comes to "public dollars, it's public education." You agreed with him on Twitter.
  - a. Do you think charter schools are succeeding in Florida?
  - b. I do not think charter schools are succeeding in Florida. The NAACP in 2016 passed a resolution calling for a moratorium on charter schools, until the numerous problems in this sector are fixed. Those problems include financial

mismanagement, fraud, barriers for low-income students and students with disabilities to enroll, and abrupt school closures that leave parents and students adrift. There are more than 650 charter schools in Florida, with more than 290,000 students enrolled. About 20 charters a year close. Most charter schools are run by for-profit management companies, they have failed on their promises of reform, they have failed Florida's students and they have cost taxpayers millions of dollars that taxpayers will never be able to recover. How do you validate a system that loses millions of tax dollars, with no educational benefit to students while depleting public school funds?

- c. Do you believe there should be more financial disclosures and rules on how charter schools spend their federal funding?
  - d. What has your Department done to prove to tax payers and parents that the charter school sector has improved?
  - e. As of the 2016-2017 academic year, some 284,000 students, or about 10 percent of Florida's 2.8 million students enrolled in the pre-kindergarten-through-high school-system, attended charter schools. Hundreds of millions of federal dollars go to improve and expand charter schools each year, but I'm still hearing from constituents about these schools not being a part of the community fabric in Florida. And I don't use those words lightly, public schools are supposed to be the great equalizer, but also an institution that provides common ground for all of us. When traditional public schools open their doors to hurricane victims, while charter schools slam their doors shut they destroy the fabric of community, when charter school developers leave an abandoned building behind because the profits weren't large enough they are also abandoning the community. What data does the department have to show that these schools are actually improving at management and accountability?
4. Every child has the right to a high-quality education and an engaging learning environment. We must invest in our public schools and teachers to make certain that, regardless of the income or level of education attained by their parents, every child has access to an equitable, high-quality public school. This is the way to truly make America great. With two of the largest school districts in the country located in my Congressional district, I am very concerned about the Administration's proposed budget cut of 12 percent or \$8.8 billion from the Department of Education's budget. This could have a financial impact of more than \$26 million alone for Broward County Public Schools and would be devastating to school districts nationwide. Considering the lack of local resources, what is the alternative federal program for the Title IIA Supporting Effective Instruction (SEI) State Grants program for teacher professional and leadership development that is eliminated in the proposed budget?
  5. Recognizing the enormous benefits and return on investment of the 21st Century Community Learning Centers (CCLC) program, I recently joined more than 100 of my colleagues on a letter to the Appropriations Committee leadership about preserving this

vital program. The letter included reference to an independent report, released just last month, that found that after school “programs improved a wide range of outcomes including student attendance, achievement in mathematics and English; grade promotion and graduation rates, and student health and fitness. This research spans the country, all age groups and wide variety of indicators of well-rounded student success.” And, with such broad bi-partisan support by Congress, what does the Administration seek to gain by eliminating such a successful program that benefits nearly 10,000 communities across the country?

**Rep. Mark Takano (CA)**

1. Secretary DeVos, the last two quarterly reports released by the Department of Education on Borrower Defense to Repayment show data on claims through September 2018 and December 2018. According to these reports, a couple thousand claims have been closed by the Department, but no claims have been approved. During your testimony on April 10, 2019 you mentioned that your Department has processed claims for closed school discharges.
  - What is the Department’s process for selecting the order for reviewing Borrower Defense claims?
  - When I asked you why the number of ‘closed’ claims had grown while ‘approved’ claims had remained stagnant you stated that you were prioritizing closed school discharge claims. In the Department’s quarterly reports to Congress on its implementation of Borrower Defense, do you count closed school discharge claims as ‘closed’?
  - Excluding those closed school discharges, what are the most common reasons that the Department closes Borrower Defense claims?
  - Can you please provide a breakdown of all the claims that have been closed during your tenure?
2. Secretary DeVos, is the Department of Education selecting Borrower Defense applications for review with the intent to close them over approving them?
3. Secretary DeVos, in your testimony on April 10, 2019 you stated that no Borrower Defense claims have been approved since a federal court ordered the Department to implement Borrower Defense.
  - Please explain how you are implementing Borrower Defense by describing the specific steps that the Department has taken in response to this decision and when the Department took those steps.
  - Please describe the lifecycle of a Borrower Defense claim including average timeframes at each step. In other words, what are the steps that a claim must go through after it is submitted before it is either approved, denied, or closed? Please include how many claims are at each stage of the process as of the date that you send your response.

4. In November 2018, Veterans and Military Service Organizations wrote a letter ([here](#)) to the Department of Education requesting action on Total & Permanent Disability (TPD) loan forgiveness for disabled veterans. The letter revealed that, according to a FOIA [response](#) the Department has wrongly put into default half of the totally disabled veterans who were identified to the Department of Education by the Veterans Affairs Department as those who are statutorily entitled to TPD loan forgiveness. When they are put into default, the Treasury Department can then seize their disability living allowance.

In addition, as the FOIA response shows, only 1 in 5 eligible veterans have filled out the TPD paperwork. Since 100% of disabled veterans may have difficulty filling out the paperwork, this is a problem calling for urgent attention.

- a. Would you please report back with a 30-day plan on how the Department of Education plans to bring the eligible disabled veterans out of default, and the plan on how to help the other eligible veterans achieve TPD discharge?

**Rep. Alma S. Adams (NC)**

1. Secretary DeVos, the Education Corporation of America (ECA) closure was the largest since ITT Tech, another ACICS accredited school. In your decision to re-recognize ACICS, you indicate that its accreditation standards effectively address the quality of its institutions' fiscal and administrative capacity. How can you justify that perspective when dozens of ACICS accredited schools close annually?
2. Secretary DeVos, in your re-recognition decision, you recommended ongoing monitoring of ACICS on four criteria to make sure the agency is complying with federal regulations. Can you describe specific actions your team is conducting to implement your plan to monitor and determine whether ACICS meets federal criteria?
3. Secretary DeVos, what is a single specific step that the Department has taken to monitor ACICS after you re-recognized them in December?
4. Secretary DeVos, will the Department seek public comment or require the reports required by your monitoring plan to be reviewed by the National Advisory Committee on Institutional Quality and Integrity?
5. Secretary DeVos, the tone of your ACICS decision letter is incredibly confident that ACICS is meeting all standards where Secretary King found shortcomings. Since you are requiring ACICS to submit reports on its compliance with these standards, will you commit to publicizing the reports? If not, what is your justification for this lack of transparency around a highly controversial decision?

6. Secretary DeVos, Historically Black Colleges and Universities (HBCUs) have the following to say about inequities in the accreditation system:
- The peer review process allows too many personal biases to enter the process and have negative impacts, especially for small, low-resourced institutions.
  - True “peers” that reflect an institution’s size, locale, sector, resources and outcomes generally do not comprise the majority of a campus review team.
  - Standards are applied without consideration of institutional size, scope, programmatic offerings, resources, endowments, etc. requiring institutions with minimal resources to be evaluated using the same criteria as some of the best endowed institutions in the country.
  - Accreditors tend to shift what is required of institutions on sanction leading to a belief that when institutions reach a state of extreme difficulty in meeting the standards, the accreditor would rather remove them from membership instead of providing them with any additional opportunity to rectify their problems.
  - The degrees of progress are not taken into account when an institution has been on sanction for two years.

Do you believe that inequities exist in our accreditation system and do you believe that action could and should be taken by the Department to correct these inequities?

7. Secretary DeVos, in April 2017, your Department announced they were ending an experiment to limit the amount of unsubsidized loans a student could take out. To date, no conclusions or information about the outcome of this experiment has been released by the Department. Existing borrowing practices and the increasing amount of student debt are important issues to this committee and most importantly, to American families. The results of this experiment could provide useful information in how Congress approaches student borrowing in an upcoming HEA reauthorization. Will you commit to releasing the results of this experiment and if so, when can we expect such a release?
8. Secretary DeVos, in order to provide child care support to only two percent of student parents with children ages 0-5 who are eligible for the Pell grant, CCAMPIS funding would need to reach \$150 million annually. Your administration’s budget is cutting support for child care on college campuses with the intent of expanding employer investment in child care. While we know many students are working, the needs of students are distinctly different than the needs of employers. Don’t you think this is an important difference, and shouldn’t we continue to support student parents through CCAMPIS?
9. Secretary DeVos, about 45 percent of community college students did not purchase or rent the required materials for a course on at least one occasion because they could not afford the materials. Today’s students typically spend between \$1,240-\$1,440 on books

and supplies each year, but open educational resources can save students between \$66 and \$121 per course. As Congress is currently working to reauthorize the HEA, will you commit to sharing information and results about the open educational resources pilot program with this Committee?

10. Secretary DeVos, the list of for-profit institutions which committed fraud is extensive. Do you think we should eliminate the 90/10 Rule that is currently in place?
11. Secretary DeVos, why would you let programs that have repeatedly put students in unsustainable debt continue to get funds from the government?
12. Secretary DeVos, it has been almost 65 years since the ruling in Brown V. Board of Education. Today, its promise remains unfulfilled. In many respects, America's public schools continue to be "separate and unequal." Indeed, the growing resegregation of American schools by race and ethnicity, compounded by economic class segregation, has become the dominant trend in American education. What role should the Office of Civil Rights play to ensure all public schools are equal for all students?

**Rep. Mark DeSaulnier (CA)**

1. Secretary Devos, GAO made four recommendations to the Department regarding the Public Service Loan Forgiveness (PSLF) program and, per the GAO's website, none of them have been implemented. You disputed the GAO's categorization of these recommendations as "Open." What has the Department done to specifically implement the GAO's recommendations? What plans does it have to implement the remainder, and on what timeline?
2. Secretary Devos, Have you required FedLoan to provide a simple way for borrowers to check on the number of qualifying repayments they have made for PSLF?
3. Secretary Devos, Have you directed FedLoan to provide information and guidance to borrowers who are submitting employment certificates but are not making qualifying loan repayments?
4. Secretary Devos, Have you created an electronic version of the employment certification form and allowed electronic signatures by employers? Why or why not?
5. Secretary Devos, Have you created an electronic application form for loan forgiveness that alerts applicants if they have failed to provide required information? Why or why not?
6. Secretary Devos, In the FY 2018 appropriations bill, Congress established the Temporary Expanded Public Service Loan Forgiveness (TEPSLF) program to assist public servant

who had made loan repayments to the wrong repayment plan. The Department of Education was supposed to create an easy process for borrowers to correct for its poor implementation of the PSLF program. As of March 25, your Department had approved just 262 borrowers under the temporary program, out of 9,820 applications. This means the Department has denied 97 percent of applications. What has the Department told these borrowers that have been denied?

7. Secretary Devos, Has the Department informed these borrowers that they may be eligible for TEPSLF after they have made repayments for 10 years?

**Rep. Joseph D. Morelle (NY)**

1. At some point in January 2019, students enrolled at Argosy did not receive their credit balance refunds – i.e. cost of living stipends – for the 2019 spring semester from the Department. These students rely on stipends to pay for necessary expenses throughout the semester, such as food, gas, and rent. When and how was the Department made aware of the fact that students had not received these stipends?
2. Did you or anyone in the Department communicate directly with students between when the Department found out about this crisis and the March 8<sup>th</sup> closure, to let students know that they couldn't rely on the Department to provide their stipends? If so, please provide copies of these communications and the groups that they were distributed to.
3. Despite significant pressure from numerous congressional offices, you departed from lessons learned after the Corinthian and ITT closures and refused to communicate directly with students for two months after they had not received their cost of living stipends for the semester. These students counted on you to provide them with cost of living stipends and couldn't afford groceries, rent, diapers, and other essentials. Not only were you unable to provide them stipends, but you didn't even tell them what to expect. How do you justify your lack of action in the face of this crisis?
4. During the hearing you said you did not know what letter of credit was on file with Argosy on the day of its closure. Later you revised your answer stating that the correct letter of credit was on file, although you did not know the amount. Despite your conflicting comments, we have entered court filings from the Department into the record that state there was no letter of credit on file with the Department as of November 19, 2019. In order to better understand the situation please:
  - a. Clarify the amount of the letter of credit on file for all Dream Center-owned institutions at the time of their closure.
  - b. Provide a full accounting of how these funds have been expended or released, what funds remain, and the Department's planned use for those funds.

- c. If a letter of credit was on file as of November 19, 2018, please explain why Department attorneys filed a joint status report stating that Dream Center had no active letters of credit on file.

**Rep. Josh Harder (CA)**

1. Secretary DeVos, you've said<sup>3</sup> repeatedly that you are committed to ensuring that all students have an opportunity to learn free from discrimination. You have also talked about the Office for Civil Rights and its commitment to ensuring nondiscrimination in our nation's schools. Is there currently a hiring freeze at the Office for Civil Rights?
2. Secretary DeVos, as you know, last year Congress appropriated a \$16.5 million dollar increase in the Office for Civil Rights 'budget to address high caseloads and staff attrition during this administration. At the time, Congress specifically noted that these increases in OCR's budget were intended for new hiring. With Congress' intent in mind, please answer the following:
  - (a) How many staff have been hired at OCR during the past two fiscal years, with these additional tax dollars?
  - (b) How many staff have retired or otherwise left OCR during this time?
  - (c) What is your plan to increase the pace of hiring at OCR?
  - (d) Will you remove the hiring freeze at OCR?
  - (e) How many staff are in your human resources office that serves OCR?
  - (f) How many employees do they serve?
  - (g) Do you plan to increase staffing/resources for the HR office that oversees OCR hiring?
  - (h) What other measures have you taken to increase staffing and resources?
  - (i) Please provide Congress with an update on your hiring at OCR by the end of the fiscal year.
3. Secretary DeVos, I am greatly concerned with reports indicating that the percentage of complaints concerning the educational needs of students with disabilities has dropped from 45 percent to 34 percent, a staggering decrease.<sup>4</sup> You often talk about local control and that education decisions are best made by local states and schools; (a) Are you aware that your staff has created a list of cases that must be reviewed in Washington DC, instead of by the regional, non-political staff who are working the most closely with local schools and colleges, and who are closest to the challenges those schools and colleges face? (b) According to these practices that your staff have developed, in several instances, when a case of alleged discrimination such as alleged racial discrimination in

<sup>3</sup> U.S. Department of Education, "U.S. Secretary of Education Betsy DeVos Issues State on New Title IX Guidance." <https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-issues-statement-new-title-ix-guidance>

<sup>4</sup> Da Loba, Andre, ProPublica. "DeVos Has Scuttled More Than 1,200 Civil Rights Probes Inherited From Obama." <https://www.propublica.org/article/devos-has-scuttled-more-than-1-200-civil-rights-probes-inherited-from-obama>



school discipline is dismissed or found not to have merit, your Headquarters here in Washington DC does not require it to be reviewed. But when regional staff recommend a finding of a violation, your staff are requiring review, and sometimes those recommendations by career staff are changed - why is that? (c) Do you understand that this policy incentivizes staff to not find a violation on such cases?

4. Secretary DeVos, how many allegations of discrimination in school discipline (K-12) under Title VI, did OCR (a) dismiss; (b) find no violation (Section 303a of the CPM); (c) or resolve with an agreement under Section 302 or 303b of OCR's Case Processing Manual in FY 16, 17, 18 and 19? (Please provide the total in each area: dismissal, 303a, 302, 303b). How many open cases that include allegations of discrimination under Title VI in school discipline are currently open?

**Rep. Lucy McBath (GA)**

1. In January 2019, a federal court appointed a receiver to wind down operations at Argosy University. After reviewing the financial records of the Education Management Corporation (EDMC) sale to Dream Center Education Holdings, LLC (DCEH), the court-appointed Receiver stated in federal court filings that “within sixty days of the closing of DCEH’s purchase of the Universities from EDMC, DCEH discovered that EDMC and its representatives misrepresented key financial factors concerning the Universities. Despite DCEH’s best efforts, the Universities were, on the whole, failing without hope for redemption.”<sup>5</sup>
  - a. Secretary DeVos, when did the Department of Education first have concerns about the financial viability of any EDMC or DCEH-owned institutions? Please detail how the Department came by this information.
  - b. Secretary DeVos, do you believe if students had known that these schools were “failing without hope for redemption” that they would have enrolled?
2. Dream Center Education Holdings, LLC purchased South University, Argosy University, and the Art Institutes from the Education Management Corporation in October 2017. Students who enrolled at these universities were under the assumption that the Department of Education was sufficiently monitoring the finances of Dream Center Education Holdings, LLC. The Department of Education should help these students who were affected by the closures.
  - a. Secretary DeVos, will the Department of Education extend the closed school discharge window back to October 2017?
  - b. Secretary DeVos, if the Department will not extend the closed school discharge window to October 2017, will the Department extend the window at all? What factors will the Department consider in making this determination?

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<sup>5</sup> Case: 1:19-cv-00380-DAP Doc #: 1 Filed: 02/21/19 6 of 22. PageID#: 6

**Rep. Susie Lee (NV)**

1. Secretary DeVos, the 2016 Borrower Defense to Repayment Rule was promulgated to assist students in achieving a timely discharge of their loans. In order to ensure that taxpayer dollars are adequately protected, Borrower Defense the regulations also require institutions to report to the Department the occurrence of specified automatic and discretionary triggering events which allow and require the Department to better predict and respond to institutions' financial distress. An October 2018 court order required the Department of Education to enforce the Borrower Defense to Repayment Rule.<sup>6</sup>
  - a. In complying with the October 2018 court order, have you provided guidance to institutions to ensure that these institutions are reporting these triggering events? If so, please include a copy of the guidance and a list of institutions that the Department sent it to.
  - b. Please provide the name of all institutions that have provided information to the Department of Education to date.
  - c. Please provide a list of all discretionary or automatic actions that have been taken under the 2016 Borrower Defense Rule, such as the requirement of financial surety, public disclosure of information to current and prospective students, or recalculation of a school's composite score.

**Rep. Lori Trahan (MA)**

1. SECRETARY DEVOS, please provide a description of data collected by the Student Aid Enforcement Unit or the Department more broadly, that the Department relies upon to identify schools at risk of failure.
2. SECRETARY DEVOS, has the Enforcement Unit investigated allegations of misrepresentations or other illegal activity by institutions of higher education since you became Secretary? If so, please provide a list of closed investigations and brief description of the allegations and outcome.
3. SECRETARY DEVOS, the Enforcement Unit's first supervisor during your tenure, Julian Schmoke, previously was the dean of a for-profit college – DeVry University – which paid more than \$100 million to settle a lawsuit involving claims of false advertising and misleading practices. We understand that Dr. Schmoke was removed from his position as head of the Enforcement Unit but is now under consideration for a different position in the Department.
  - a) Why was Dr. Schmoke removed as head of the Enforcement Unit?
  - b) What duties has he been fulfilling since his removal?

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<sup>6</sup> CAPPS v. DeVos, Case 1:17-cv-00999 (D.D.C.)(Oct. 16, 2018).

- c) As of the date of your response, what is his position title and responsibilities?
4. SECRETARY DEVOS, during your first year as Secretary the Department had an operational data-sharing memorandum of understanding (MOU) between the Department and Social Security Administration (SSA), necessary to implement the Gainful Employment regulations. However, records requests from the Department to SSA dropped by 99.6% from 1,305,967 to 61,000 in your first year. It appears you were pre-emptively not implementing the Gainful Employment regulations.
    - a) Please describe how you were implementing the Gainful Employment regulations without this data.
    - b) Why did the Department only make .4% the requests in your first year as compared to the last year of the Obama administration?
  5. SECRETARY DEVOS, you have used a SSA legal decision to justify not implementing the Gainful Employment rule, stating that it would be unlawful for SSA to share this data with the Department. Please transmit that legal opinion.
  6. SECRETARY DEVOS, reportedly, the Department used the data collected under the Gainful Employment MOU with SSA to attempt to give partial relief to defrauded borrowers under Borrower Defense.
    - a) Did the Department use information collected under the Gainful Employment MOU for any purpose other than enforcement of the Gainful Employment rule? If so please detail that use, specifically include any information about the Department's use of this data for Borrower Defense purposes.
    - b) Was this a reason that the MOU was suspended?
    - c) Was the use of the Gainful Employment data to calculate partial relief outside of the scope of the MOU?
  7. How many Corinthian borrowers have received closed school discharges based on individual applications submitted to the Department? What is the total value of those discharges?
  8. How many Corinthian borrowers have received automatic closed school discharges under the recently implemented automatic closed school discharge provision of the 2016 Borrower Defense rule? What is the total value of those discharges?
  9. How many ITT borrowers have received closed school discharges based on individual applications submitted to the Department? What is the total value of those discharges?
  10. How many students who attended Dream Center-owned Argosy University have applied for closed school discharges? Of those, how many have received closed school discharges and what is the total value of those discharges?
  11. How many students who attended the Dream Center-owned Art Institute schools have applied for closed school discharges? Of those, how many have received closed school

discharges and what is the total value of those discharges?

12. Will the Department use its authority pursuant to 34 CFR 685.214(c) to extend the closed school discharge period for students who attended schools owned by Dream Center Educational Holdings and the Dream Center Foundation? If so, until what date will the Department extend the closed school discharge period back?
13. Will the Department use its authority pursuant to 34 CFR 685.214(c) to extend the closed school discharge period for students who attended schools owned by Education Corporation of America? If so, until what date will the Department extend the closed school discharge period back?
14. In April 2016, ED conducted a matching program with SSA to identify disabled federal student loan borrowers eligible for Total Permanent Disability (TPD) discharges. The matching program identified approximately 387,000 student loan borrowers eligible for a streamlined TPD process.
  - Of the 387,000 borrowers, how many have submitted TPD applications?
  - Of the 387,000 borrowers, how many have received TPD discharges?
  - Of the 387,000 borrowers, how many are currently in default on their student loans?
  - Of the 387,000 borrowers, how many have been certified for Treasury Offset (TOP)?
  - Of the 387,000 borrowers, how many have had their federal tax refunds offset? What is the total value of those offsets?
  - Of the 387,000 borrowers, how many have had their Social Security benefits offset? What is the total value of those offsets?
15. In April 2018, ED conducted a matching program with the VA to identify disabled veterans eligible for TPD discharges. The matching program identified 42,763 disabled veteran borrowers eligible for a streamlined TPD process.
  - Of the 42,763 borrowers, how many have submitted TPD applications?
  - Of the 42,763 borrowers, how many have received TPD discharges?
  - Of the 42,763 borrowers, how many are currently in default on their student loans?
  - Of the 42,763 borrowers, how many have been certified for Treasury Offset (TOP)?
  - Of the 42,763 borrowers, how many have had their federal tax refunds offset? What is the total value of those offsets?
  - Of the 42,763 borrowers, how many have had their Social Security benefits offset? What is the total value of those offsets?
16. According to the FSA website, the Department has “begun the process” of cancelling student loans for Argosy and Art Institute students that did not receive the credit balance refunds owed to them.
  - How many total Argosy and Art Institute borrowers did not receive their credit balance refunds?
  - Of those, how many have received automatic discharges to date?
  - What is the total value of the credit balance refunds that students did not receive?

17. How many students were receiving federal student loans for attendance at the Illinois Institute of Art (including the Chicago, IL, Schaumburg, IL and Novi, MI campuses) from January 20, 2018 until the date the school closed?
18. How many students were receiving federal student loans for attendance at the Art Institute of Colorado from January 20, 2018 until the date the school closed?
19. Will the Department provide group student loan discharges for former students of the Illinois Institute of Art and Art Institute of Colorado who did not receive accurate information about the accreditation status of their schools on or after January 20, 2018?

**Rep. Castro (TX)**

1. Secretary DeVos, Under your leadership, the Education Department has repeatedly proposed expanding Federal Pell Grants to short-term job training programs without increased oversight to ensure program quality. In fact, when you came before my colleagues on the Appropriations Committee a few weeks ago, you indicated that this expansion would not pose any additional costs. You stated that “there would be a great many Pell Grant-eligible students who would opt to take a shorter-term program in lieu of the traditional route, and we would see a tradeoff of funds from the long-term Pell Grant programs to the short-term programs.” Not only does this statement contradict your own budget documents, but there are some deeply problematic narratives underlying this argument. Low-income students and students of color are already disproportionately concentrated in shorter-term degree and certificate programs. The vast majority of Pell recipients are from lower income families, and almost 50% of Hispanic undergraduates and nearly 60% of Black undergraduates rely on Pell Grants to attend school. These are students that have chosen a college education, and we should not be pushing them to forgo degrees and opt for shorter-term, workforce-focused programs. **Why do you think that Pell recipients would be better off forgoing a college degree program?**
2. Secretary DeVos, while we need to ensure that higher education meets the needs of adult students and sets up students for success in the workforce, I have a hard time believing that a massive expansion of short-term programs without oversight accomplishes those goals. Quality, stackable short-term programs can provide both immediate and long-term benefits. However, currently, the education market is flooded with high-cost, low-quality short-term programs operated by for-profit colleges. The Brookings Institute found that earnings gains for students who attended certificate programs at for-profit colleges “cannot be shown to be different from zero and are, at most, about \$365 per year.” This left the average for-profit certificate student with a loss of about \$1200 over their lifetime. While your budget recommends limiting the expansion of Pell Grants to “high-quality” short-term programs, there is no specificity for how you would ensure “high-quality” is ensured for every program. **Can you commit to supporting the exclusion of the for-profit sector from any potential Pell expansion?**

**Rep. Glenn Thompson (PA)****1) Title I Formula Study**

Secretary DeVos, as you are aware, Part A of Title I in the Every Student Succeeds Act (ESSA) provides funding to local educational agencies through four separate formulas.

ESSA also directed the Director of the Institute of Education Sciences to complete a study on the effectiveness of these four existing Title I formulas to deliver funds to the most economically disadvantaged communities.

I wanted to take a second to say I appreciate the Department's follow through on this study and look forward to the findings of this study in May. It is my firm belief that all children are equal under the law and the federal investment in their futures should not be determined by their zip code.

**2) Career and Technical Education**

As you know, there are more than 7 million open jobs across the country. These jobs are left vacant because individuals do not have the skills necessary to fill them.

As Co-Chair of the Career and Technical Education Caucus and a Member of this Committee, I have always strongly supported CTE programs that provide learners of all ages with career-ready skills.

Fortunately, during the 115th Congress, we were able to enact the *Strengthening Career and Technical Education for the 21st Century Act* which restores rungs on the ladder of opportunity for all Americans to be successful in the workforce.

This legislation, which was signed into law by President Trump in July 2018, is the first major overhaul to the *Carl D. Perkins Career and Technical Education Act* since 2006.

This legislation aims to close the skills gap by modernizing the federal investment in CTE programs and connecting educators with industry stakeholders.

I was happy to see that Career and Technical Education received full funding under the Administration's proposed FY2020 Budget.

Madam Secretary, the reauthorization of Perkins included a provision that replaced the local plan required from CTE providers with a comprehensive needs assessment meant to align the CTE programs being offered with local workforce needs.

During this transition year and beyond, how do you plan to further ensure that our students are provided with the skills they need to not just fill open jobs, but have successful careers?

**3) Higher Education (Pell Grants)**

Madam Secretary, approximately 80 percent of all jobs require some form of postsecondary education or training – including the more than 50 percent of jobs that are “middle skill” requiring more than a high school degree but not a four-year degree.

With this being said, I was excited to see the Administration’s proposal to expand Pell Grant eligibility to include short-term programs. This move will allow more Americans to access education programs that can get them the skills they need and jump right into the workforce more quickly than traditional degree programs.

Madam Secretary, the economy is changing rapidly, and increasingly I am seeing how important it is for constituents in my district to access the postsecondary education system throughout their professional lives.

This is particularly true for contemporary students who went to the workforce after high school and those who never received a higher education credential.

Can you elaborate on the President’s budget proposal to expand the Pell Grant to shorter-term programs? How could this new access to funds help students, community colleges, and employers across the country remain competitive in this global economy?

**Rep. Russ Fulcher (ID)**

**CTE Programs**

1. One reason parents and students don’t pursue career and technical education is the lingering perception that these programs are an alternative to students unable to pursue and master college prep coursework. What are we doing at the Federal level to promote innovative CTE programs that will appeal to more students?
2. Often, the problem with standards is aligning the CTE curriculum to traditional academic curriculum. Yet, CTE programs tend to be very high quality due to rigid demands by companies for good curriculum content, cutting edge knowledge, and strong practical application. In short, where industry standards and certifications are strong. What are some common qualities you see in CTE programs that demonstrate positive outcomes?

**Accreditation**

3. In recent conversations we’ve had, you mentioned that your Department would conduct a negotiated rulemaking process to address a package of higher education regulations in the areas of accreditation and innovation. Last week, negotiators came to a consensus on a number of reforms. Could you please explain the status of the negotiated rules and what are the next steps for this higher education regulation package?

**Rep. Ron Wright (TX)**

On January 19, 2018, the Department of Education (Department) released a pre-solicitation notice to announce the release of a solicitation for contractor support of a payment card pilot program and to outline how the Office of Federal Student Aid (FSA) expects to operate the pilot program. Specifically, the Department is implementing a new student aid payment card program pilot, which will operate in concert with the proposed Next Generation Financial Services Environment known as "Next Gen." As a part of the implementation of Next Gen, FSA is launching a payment card to facilitate federal student loan refunds, funds originated by participating schools, and funds received from other sources. Currently, students have the option to receive their loan refunds through a number of options, including electronic funds transfer, check, and cash. The pilot program will primarily be focused on testing if the payment card can provide timely delivery of loan refunds to current college students who receive regular loan refunds and will be extended to a total of four institutions of higher education serving a maximum of 25,000 students at each institution. Student loan borrowers would have to apply to use the payment card, and they would be able to apply either online or through a mobile device.

On October 17, 2018, FSA published in the Federal Register a Notice inviting Applications from prospective Pilot Implementers and on November 2, 2018, FSA published in the Federal Register an amendment to that Notice. The Notice indicated that "no costs or fees of any kind may be imposed on participating customers;" however, it is not clear what will happen with regard to the borrowers relationship with the banks once they are no longer students. The Notice also highlighted that the pilot program would provide a bank account to low-income students who might not otherwise have access to such account; however, there is data out there that says, in some instances, banks are often costlier for the poor than check cashers and other alternative services. Can you share whether or not students will be charged fees or have a cost once they have completed their education? What happens to students who leave an institution and don't complete?

**Rep. Willima R. Timmons, IV (SC)****Federal Government and Education**

It seems when it comes to education, as well as a host of other areas, the federal government tends to overreach and overstep its bounds. I believe that parents and school teachers know what is best for students, rather than politicians from Washington, DC. Decisions and dollars should be driven towards the student.

- *Would you agree with this sentiment?*
- *What can the federal government do to ensure that our children are receiving the best education while not overreaching in areas that are best suited for parents and teachers?*



**Elevate the Teaching Profession through Innovation**

In your FY20 budget, you request \$200 million for Teacher and School Leader Incentive Grants. You mention this program would support “human capital management Systems that focus on high quality mentoring or residencies for novice teachers.”

- *Could you describe your vision for such a program?*
- *What would be the process for which a teacher is selected for this grant?*

Your budget highlights proposals under Education Innovation and Research (EIR) and the Teacher and School Leader Incentive Grant program.

- *Could you speak to how these ideas came into fruition? Did you consult with teachers and/or school leaders before crafting the proposal?*

**Vocational Rehabilitation**

I understand that there are restrictions placed on what State VR agencies are allowed to spend the mandated 15% of federal funds received. This 15% must be spent on students between the ages of 13 and 21 years old and can only provide pre-employment transition services in five areas. I understand that certain State agencies, such as the one in South Carolina, struggles to spend that 15%, which comes out to be around \$9 million, because of these restrictions and because they cannot use these funds to provide services such as transportation, assisting with tuition, etc. for these students.

- *Do you support allowing more flexibility within the RSA guidelines in the interpretation of how these funds can be used to provide the support necessary to carry out the services in those five areas?*
- *Would you agree that taking into consideration a state's VR program structure and the needs of the constituents is important when determining guidelines placed on spending?*

CHAIRMAN SCOTT

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*Secretary DeVos, the Rehabilitative Services Administration (RSA) has the responsibility of enforcing and overseeing the implementation of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA) in 2014 and its regulations finalized in 2016. The amendments made in 2014 included a focus on employment for individuals with disabilities in competitive, integrated settings. Congress's intent of WIOA was to preference competitive, integrated settings and focus on improving workforce opportunities for individuals with disabilities aligned with the goals of the Americans with Disabilities Act and Olmstead Supreme Court decision. Despite a report citing that all state vocational rehabilitation agencies are using a case-by-case analysis to review employment decisions, there are reports from the field of inconsistencies with the requirement for a case-by-case analysis, as required in 29 USC 722 (d).*

*Scott Question 1.1 (QFR 1a).* What support and guidance is RSA providing to vocational rehabilitation agencies on ensuring a case-by-case analysis is provided for employment decisions?

**ANSWER:** The Department has communicated, including in the preamble to the final regulations published at 81 FR 55630, that determinations of whether an employment location would be considered an “integrated setting,” for purposes of the Vocational Rehabilitation (VR) program, are a matter of state determination that must be made on a case-by-case basis. State VR agencies are privy to all facts of any given employment location and are in the best position to make such decisions whenever questions arise. To this end, the Department is working with state VR agencies on an as needed basis as they express a need for additional information.

RSA continues to provide technical assistance to support State VR agencies around “competitive integrated employment” for individuals with disabilities through its monitoring of State VR agencies both directly and through its technical assistance centers.

*Scott Question 1.2 (QFR 1b).* What enforcement procedures is RSA employing to ensure all aspects of WIOA and its regulations are followed and individuals with disabilities are provided competitive, integrated employment?

**ANSWER:** RSA’s primary enforcement responsibilities are carried out through its monitoring of State VR agencies, as discussed, and its review and approval of the WIOA Unified and Combined State Plans, in accordance with sections 102 and 103 of WIOA. These plans describe how state agencies that oversee or partner on WIOA will work together for coordinated service delivery, including ensuring WIOA requirements are followed for individuals with disabilities across all programs. Since FY 2017, RSA has worked closely with other Federal agencies administering WIOA programs, including the U.S. Department of Labor’s Employment and Training Administration and the U.S.

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

Department of Education’s Office of Career, Technical, and Adult Education, to ensure a consistent approach to enforcement of the jointly-administered WIOA requirements. RSA also works closely with these Federal agencies to review and approve the WIOA State Plans.

*Secretary DeVos, the Office of Special Education Programs (OSEP) underwent a change in the way it reviewed data and oversaw state implementation of IDEA in 2014, shifting to the Results Driven Accountability framework (RDA). The framework focuses on performance plans and reports, determinations, and monitoring and support for states. Given the framework has now been in place for several years, please provide an update on progress and how the shift in the framework has changed outcomes for students.*

*Scott Question 2.1 (QFR 2a).* In particular, is the framework allowing OSEP to catch problems in states sooner? For example, the problem with the Texas special education cap, is the framework allowing for quicker identification of such issues?

**ANSWER:** As part of the Department’s commitment to rethink education in the United States, OSERS is rethinking RDA—in order to better support states in their work to raise expectations and improve outcomes for infants, toddlers, children, and youth with disabilities, to provide flexibility within the constructs of the law, and to partner with parents and families and with diverse stakeholders.

The Differentiated Monitoring and Support (DMS) system, a component of RDA, is designed to provide the appropriate level of monitoring and support to States based on State need. Consistent with the requirements of the Uniform Guidance, OSEP uses a data-based, risk-assessment process to make decisions about the level of OSEP’s engagement with States. In its risk analysis, OSEP uses data from a variety of sources, including the State Performance Plan/Annual Performance Report (SPP/APR), fiscal information, and information from the State Systemic Improvement Plans (SSIPs). Based on its review of these data, OSEP determines whether its level of engagement with a State is “intensive,” “targeted,” or “universal.” This model identifies States based on the risk-assessment and not on the general supervision oversight for their results, compliance, fiscal information, and their SSIPs. As a result, there are States that had not been monitored for up to 11 years. Through the RDA process, OSEP is moving to a cyclical model that will continue to use a data-based, risk-assessment process to assess all States’ general supervision systems with a higher emphasis on results for students with disabilities.

Under this new model, OSEP will be looking at programmatic and fiscal oversight, parental and family rights, and performance and improvement of results for infants, toddlers, children and youth with disabilities and their families. This will include a three-year phase-in model for preparation, site visits, and follow-up. This new process will provide an equitable monitoring system as well as identify States that may not have been identified under the previous model.

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Rethinking RDA allows OSEP to continually examine all processes and factors that contribute to identifying issues in States in a timely manner.

In the case of Texas, the State violated the requirements of the Maintenance of State Financial Support provisions of the IDEA, and OSEP is working with the State to rectify this matter and ensure that students with disabilities receive the services they are entitled to under the IDEA.

*Scott Question 2.2 (QFR 2b).* When a state is identified as low performing, what are the supports being provided? Please describe some examples of success of evidence-based supports provided to states and how those improved outcomes.

**ANSWER:** As mentioned above, OSEP has a differentiated system of supports. States that are identified as “intensive” are provided with the greatest level of support. The range of options for “intensive” States includes:

- On-site TA visits;
- Frequent calls (usually monthly) with the State to discuss the root causes for low performance and State’s plans to address underlying issues; and
- Collaboration with OSEP-funded TA providers. The TA providers are often in the best position to provide the type of specialized, ongoing support needed by States.

Because the factors associated with low performance are complex and multi-dimensional, it is difficult to directly attribute improved performance to intervention by OSEP or OSEP-funded TA providers. However, OSEP and its TA providers take a systems approach to improving performance. We support States in areas including data analysis, infrastructure analysis, the selection of evidence-based practices, and program evaluation. Although improvements in one or more of these areas may be necessary to bring about improvement at the child level, measurable improvement on a systems level takes time. Our TA centers consistently ask customers for feedback on the usefulness and quality of the technical assistance and support they provide.

*Scott Question 2.3 (QFR 2c).* Has the attrition and low staff numbers at the Department of Education impacted staff capacity to carry out RDA?

**ANSWER:** While these issues can present challenges, we make every effort to ensure that we are carrying out mission-critical responsibilities, including RDA, within our current staffing levels. By prioritizing our work and differentiating our levels of support, we have been able to meet timelines and objectives, and to ensure that States receive support as they work to improve outcomes for students with disabilities.

*In September 2016, a Minnesota court found that the Minnesota School of Business and Globe University had engaged in consumer fraud and deceptive practices due to misrepresentation. After a series of events, including the revocation of state authorization, the Department of Education withdrew Title IV eligibility for these institutions. Between September 2016, when the school was found guilty of fraud, and December 2016, when the Department of Education*

## EDUCATION AND LABOR HEARING (4.10.19)—QUESTIONS FOR THE RECORD

*withdrew Title IV participation, thousands of students withdrew from the school. However, the main campuses remained open until September 2017. Given the Secretary's authority to extend the 120-day look-back period for closed school loan discharge, the Minnesota Attorney General Swanson sent you a letter on January 4, 2019 urging you to extend the look-back window to September 2016 when the school would found to have defrauded students.*

*Scott Question 3.1 (QFR 3a).* Has the Department considered extending the look-back period? Why or why not?

**ANSWER:** Yes, we understand that, on September 8, 2016, a Hennepin County, Minnesota court found in *State of Minnesota v. Minnesota School of Business, Inc., et al.* that Globe engaged in consumer fraud and deceptive trade practices. Based on those findings, the Secretary has concluded that exceptional circumstances warrant an extension of the period for which closed school discharges are available for former Globe students, and will permit borrowers to receive a closed school discharge if they withdrew on or after the date of the court ruling, September 8, 2016, which is more than 120 days prior to the date Globe closed.

*Scott Question 3.2 (QFR 3b).* If the Department has considered extending the look-back period, what dates are being considered and why?

**ANSWER:** Please see the above response.

*Scott Question 3.3 (QFR 3c).* When does the Department intend to have a final determination on the official look-back period for these schools?

**ANSWER:** The Globe decision was sent to the State of MN on July 29, 2019.

*Scott Question 3.4 (QFR 3d).* Will the Department convey its ultimate decision with the Minnesota Attorney General's office?

**ANSWER:** Yes. The decision was sent to Minnesota State Attorney General Keith Ellison on July 29, 2019.

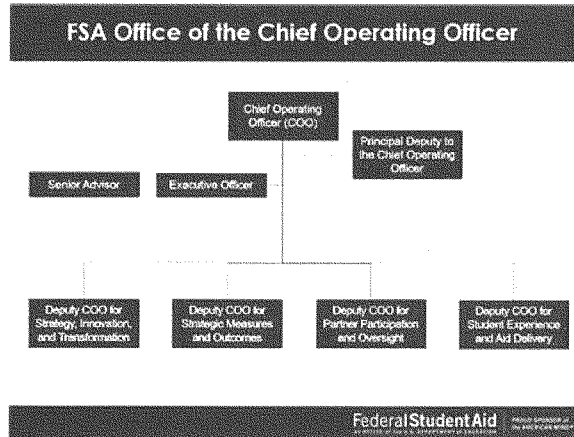
*On April 9, 2019, Politico reported that the Office of Federal Student Aid was reorganizing, including reducing the number of senior officials who report directly to the head office. The reporting announced that the plan was first developed last October and that DeVos had only recently approved the plan.*

*Scott Question 4.1 (QFR 4a).* Please provide a copy of the organizational and staffing map at FSA and include staffing levels for each team.

**ANSWER:** Currently, four senior executives already employed at FSA—known as deputy chief operating officers, as well as one newly hired principal deputy to the chief operating officer, report directly to FSA's chief operating officer. Prior to this change, 17 senior executives reported directly to the chief operating officer. This change does not

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represent a reorganization, but rather a change in FSA’s front-office reporting structure. It is standard protocol for a new chief operating officer to make such reporting structure changes. The current front-office structure is as follows:



FSA’s overall organizational structure remains unchanged:

Staffing levels for each business unit are as follows:

FSA Office	Employee Count*	FSA Office	Employee Count*
Administrative Services	74	FSA Acquisitions	72
Business Operations	342	Performance Management	16
Chief Operating Officer <sup>#</sup>	75	Program Compliance	323
Customer Experience	101	Risk Management	18
Enforcement	38	Technology	108
Finance	68		

\*As of Aug 3, 2019

<sup>#</sup> Includes full-time equivalent for staff reporting to the deputy chief operating officer, chief enterprise data officer, strategy and transformation officer, head of policy liaison and implementation, and FSA chief of staff.

Please see answer to Scott 4.5 for additional information about FSA’s future organizational plans.

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*Scott Question 4.2 (QFR 4b).* In narrative form, please explain the main organizational changes.

**ANSWER:** Please see answer to Scott Question 4.1 above.

*Scott Question 4.3 (QFR 4c).* Who was the lead staff responsible for development of the plan?

**ANSWER:** With input from FSA executives, senior leaders, and others, FSA’s chief operating officer developed the front-office reporting structure changes that were announced to FSA employees on April 9, 2019.

*Scott Question 4.4 (QFR 4d).* The article stated that the executive committee will consist of four new deputy chief operating officers and other staff. Please provide the role of the executive committee, the names and titles of each individual on the committee, and a brief description of each individual’s position.

**ANSWER:** The executive council—made up of FSA’s executive leaders—is empowered to make operational decisions to meet FSA’s performance goals and objectives.

**FSA Executive Council**

<b>Executive Council Member and Title</b>	<b>Responsibilities include</b>
Gen. Mark. A. Brown Chief Operating Officer	Managing strategy, operations, and support functions to ensure that best-in-business performance is delivered consistently
Mr. Joe Lindsey, Principal Deputy to the Chief Operating Officer	Leading FSA’s support services, including human resources, finance, facilities, acquisitions, communications, and technology.
Mr. Chris Greene Deputy COO for Student Experience and Aid Delivery	Leading all operations related to the customer experience, including customer communications and what actions the customer takes to know about, apply for, receive, and repay federal student aid
Ms. Robin Minor Deputy COO for Partner Participation and Oversight	Leading all areas related to the participation, oversight, and enforcement of institutions that participate in the federal student aid programs

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<p>Dr. Michael Dean Deputy COO for Strategic Measures and Outcomes</p>	<p>Establishing and maintaining the leading indicators for FSA, while ensuring that the enterprise is effective and efficient as a performance-based organization</p>
<p>Ms. Marianna O’Brien Director of Strategic Communications</p>	<p>Developing and leading FSA’s efforts to inform internal and external audiences about FSA’s programs, products, and services.</p>
<p>Dr. Julian Schmoke Senior Advisor</p>	<p>Leading <i>Clery Act</i> team operations and advising the chief operating officer about matters related to the enforcement of the <i>Clery Act</i>.</p>

*Scott Question 4.5 (QFR 4e).* Will FSA be hiring additional staff? If so, how will the new staff be incorporated into the different teams?

**ANSWER:** Currently, FSA executives are evaluating the organization to determine how it will be structured and staffed to best align with the next generation of federal student aid transformation that is underway. While leaders agree that it makes sense to align customer-facing products, services, and systems and partner-facing products, services and systems, all changes will continue to focus on greater accountability, agility, customer service, and decentralized decision-making. Some parts of the future structure of FSA, including hiring, may be implemented relatively quickly; other parts may require a formal reorganization. The scope and timing of changes are under review, but will be communicated appropriately to all stakeholders once they have been finalized. We appreciated the opportunity to brief your staff on proposed changes to FSA in September.

*Approximately half of Pell eligible FAFSA applicants are selected for verification annually according to the End-of-Year Pell Grant reports for both 2015-16 and 2016-17. According to analysis by the National College Access Network, students selected for verification are less likely to ultimately receive a Pell Grant—56 percent of Pell eligible FAFSA filers who are selected for verification receive a Pell Grant, compared to 81 percent of Pell eligible FAFSA filers not selected for verification. The goal of FAFSA verification is to confirm that students are indeed low-income.*

*In order to ascertain whether the significant burden placed on students is warranted, please send:*

*Scott Question 5.1 (QFR 5a).* Among all applicants that completed the verification process in the most recent year for which data are available, the percentage of applications that resulted in a change in expected family contribution, and the percentage of applications that resulted in a change in Pell eligibility.

**ANSWER:** A goal of verification is to reduce improper payments. Improper payments might be either overpayments or underpayments. Of the AY 2017–18 applicants who



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completed verification, 34.1 percent had a change in expected family contribution.

Of AY 2017–18 applicants who completed verification, 31.1 percent had a change in Federal Pell Grant eligibility. We are pleased the President signed the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act. Once fully implemented at FSA and the IRS, the FUTURE Act and the changes it includes regarding Sec. 6103 of the Internal Revenue Code (IRC) will significantly reduce the number of verification requests made through institutions to students.

*Scott Question 5.2 (QFR 5b).* The frequency of inaccurate self-reporting of non-filing status (i.e. the share of self-reported non-filers who had actually filed tax returns) for both the 2017-18 and 2018-19 award years listed separately.

**ANSWER:** A goal of verification is to reduce improper payments. Improper payments might be either overpayments or underpayments. The Department uses the IRS Statistical Study for such data, and the 2017–18 IRS Statistical Study is the most current report available.

In the 2017–18 study, the highest rates of conflicting results between reported filing status and actual filing status occurred for two groups who indicated not filing a return: (1) unmarried parents of dependent applicants who lived together, and (2) independent applicants reporting a marital status of separated. These conflicting results occurred 1.5 to 2.5 times more often than the group with the next highest percentage of conflicting results.

Of the first group, the parents of dependent applicants who reported they would not file a return, 16.67 percent were confirmed to have filed a return. Of the second group, the independent applicants who reported they would not file a return, 23.81 percent were confirmed to have filed a return.

*Scott Question 5.3 (QFR 5c).* Among all applicants who misreported non-filing status, the share of applicants that experienced changes in federal student aid eligibility after their correct filing status was reported, and among those applicants that experienced a change in eligibility, the average change in estimated family contribution and Pell Grant eligibility.

**ANSWER:** Due to the vast scope of this request, the Department determined fulfilling this inquiry is not feasible with current resources. Acquiring these data will require a change in the contract with the Department’s vendor, which will include financial implications.

*Scott Question 5.4 (QFR 5d).* Any analysis the Department has conducted on the impact of the elimination of the 30 percent verification selection cap, including any analysis related to the change in reported burden on students and institutions, or on the integrity of Title IV aid programs.

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**ANSWER:** A goal of verification is to reduce improper payments. Improper payments might be either overpayments or underpayments. The Department understands that the verification selection process must be sensitive to and seek a reasonable balance among three somewhat competing interests: the deterrent effect the verification process may have on students enrolling in college, being responsible stewards of federal funds, and administrative burden on schools. It would be very difficult for the Department to conduct a study on the burden of verification on institutions and families. The Department lifted the 30 percent cap for good reason—with the cap in place, a FAFSA filer could avoid being chosen for verification simply by filing a FAFSA form late in the year—after a campus had already met its 30-percent cap. About 30 percent of Free Application for Federal Student Aid (FAFSA®) forms go through a verification process each year. During fiscal years 2018, 2017, and 2016, FAFSA verification rates have been between 28 and 32 percent.

The Department feels strongly that the practice of allowing a 30-percent cap did not best allow us to meet our fiduciary responsibility for taxpayer dollars, and thus, we put into place a system that used targeted selection criteria to choose FAFSA filers for verification that were most likely to have made an error on their FAFSA form that could result in an improper payment. Inherently, the Department believes this was a better system.

Starting in October 2018 (AY2019–20), the Department further improved the system by putting into place a new machine learning model for selecting applicants for verification. The model is retrained every year based on the previous year's data and, therefore, promises to realize greater efficiency in identifying risk for improper under- and overpayments; greater efficiencies minimize burden to students and families. Very early analysis suggests the machine learning model is more accurately identifying risk of improper payments while also selecting fewer FAFSA filers for verification.

In addition, the Department announced changes in its verification policies to permit students to supply tax returns to verify income, as opposed to tax transcripts that could be harder for a student to obtain, and to permit financial aid staff to use professional judgement to exempt a student from verification if the student attempted, but was unable to obtain verification documents from parents or ex-spouses. FSA also reduced the verification rate to 22 percent in order to better balance our interests in fiscal responsibility with our interests in encouraging low-income students to pursue a postsecondary credential.

However, as a result of the FUTURE Act (PL 116-91), we believe that the Department will be able to do the majority of future FAFSA verifications administratively, therefore further reducing the burden on institutions and students.

*The partnership between the U.S. Department of Education and the Internal Revenue Service is necessary and crucial to the execution of the federal need-based aid program. Changes in the tax code, forms, and technology are all currently affecting students' ability to seamlessly navigate the financial aid application process.*

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*Scott Question 6.1 (QFR 6e).* Is there currently a plan in place to optimize the data retrieval tool (DRT) webpage for mobile devices and, if so, when will this optimization occur?

**ANSWER:** Currently, in order to access their income information through the IRS Data Retrieval Tool (DRT), the applicant must leave the FAFSA website and authenticate on the IRS DRT website. The Department cannot address whether the IRS has current plans to optimize the DRT webpage for mobile devices. We recommend contacting the IRS for information about any plans to optimize the DRT webpage for mobile devices.

*Scott Question 6.2 (QFR 6f).* Which FAFSA fields formerly transferred through the DRT solely from IRS Form 1040 are now, or are planned to be, transferred from tax schedules?

**ANSWER:** When the 2020–21 FAFSA form launched on Oct. 1, 2019, the Department received the same data elements on the FAFSA form via the IRS DRT that we received prior to Oct. 1, 2019. There was not a 1040A/EZ indicator in the IRS DRT previously, and there is not a Schedule 1 indicator in the IRS DRT for the 2020–21 FAFSA processing cycle.

The Department replaced the question on the FAFSA form that asks about being eligible to complete a 1040A or 1040EZ with a question that asks about a Schedule 1. It is a one-for-one replacement. The final text of the question is “Did (or will) you file a Schedule 1 with your 2018 tax return? Answer ‘No’ if you did not file a Schedule 1 or only filed a Schedule 1 to report an Alaska Permanent Fund dividend or one of the other exceptions listed in the Notes on page 9.” The Schedule 1 question on the 2020–21 FAFSA form that released Oct. 1, 2019, serves the same purpose as the 1040A/EZ question did previously.

*Scott Question 6.3 (QFR 6g).* Will the Department request IRS to allow tax transcripts be sent to authorized third parties, including institutions of higher education and college access programs?

**ANSWER:** The Department has asked the IRS to consider allowing tax transcripts, at the request of the tax filer, to continue to be sent directly to institutions of higher education as an exception to the IRS decision to no longer allow tax transcripts to be sent directly to third parties. The IRS has declined to make an exception in this regard. It is our understanding that institutions of higher education may apply to the IRS to participate in the Income Verification Express Service (IVES) program for receiving tax transcripts directly from the IRS for individual tax filers. We understand the IRS charges a \$2-per-transaction-fee for each transcript delivered via the IVES service. Sec. 483(1)(6) of the *Higher Education Act of 1965* prohibits institutions from charging a fee to students or parents for the collection, processing, or delivery of financial aid.

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*Scott Question 6.4 (QFR 6h).* Please describe any past, current, or planned efforts by the U.S. Department of Education to explore secure data sharing options with the IRS or other federal agencies that have the potential to expedite the verification process?

**ANSWER:** The Department, the U.S. Department of the Treasury, and the Office of Management and Budget have worked together to propose legislation that would capture considerable benefits for taxpayers, students, borrowers, and institutions of higher education. On Nov. 13, 2018, S. 3611 was introduced to amend the IRC and *Higher Education Act* (HEA) to facilitate the disclosure of tax return information to the Department for purposes of carrying out the HEA. On Dec. 19, 2018, the Senate unanimously passed the bill, and on Dec. 20, 2018, the House introduced its companion bill, H.R. 7386. We were delighted to have an opportunity to work with Congress on this important provision of the law.

As a result of the FUTURE Act (PL 116-91), the exemption under section 6103 of the Internal Revenue Code (IRC) represents a significant step forward in FAFSA and IDR application simplification. As reflected in the President's 2020 Budget, the Department estimates this exemption will reduce improper under- and overpayments by nearly \$100 million dollars each year. With the 6103 exemption, the Department will receive FAFSA applicants' tax return information or a verification of non-filing directly from the IRS, eliminating the need for these applicants to obtain this additional data. Also, FSA also will be able to automatically recertify income information for borrowers on an income-driven repayment plan and eliminate this prevalent cause of default.

*Secretary Devos, you failed to agree to baseline bargaining rules with the American Federation of Government Employees and unilaterally imposed a collective bargaining agreement on the union. These actions were later determined by the Federal Labor Relations to have been unlawful. The Department eliminated the amount of "official time" union representatives have at the agency and eliminated the Department's requirement to consult with the union before making an agency-wide decision.*

*Scott Question 7 (QFR 7).* Were you aware that these terms violated the Federal-Service Labor Management Relations Statute?

**ANSWER:** After the Union failed to bargain in good faith, despite the Department's efforts, for nearly a year, to engage them in negotiations on ground rules, the Department moved on and provided the Union with a substantive CBA proposal. The Union failed to respond in a timely manner, so the Department implemented the proposal as allowed under Federal Labor Relations Authority (FLRA) precedent. The Department has defended itself against the Union's unfair labor practice (ULP) charge before the FLRA and anticipates a favorable outcome before that body. However, as you note below, the FLRA has not even reached the stage of issuing a formal complaint based on the charge, let alone reached a final resolution. The specific provisions of the current CBA, including those related to official time and to further negotiations over items not expressly discussed in the CBA, comply with the Federal Service Labor-Management Relations Statute and FLRA precedent.

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*Secretary Devos, the union has filed an unfair labor practice charge regarding the Department's collective bargaining agreement. Federal Labor Relations Authority investigators have found sufficient evidence in support of that charge. A formal complaint has not yet been issued by the general counsel of the FLRA because the Trump Administration failed to nominate a general counsel for 495 days, effectively undermining agency operations.*

*Scott Question 8 (QFR 8).* Considering those findings, when can the American Federation of Government Employees expect you to return to the bargaining table as you are required to do under the law and schedule an initial meeting?

**ANSWER:** It is the Department's understanding that since the FLRA process of evaluating whether the ULP could support a complaint has not yet been completed, any premature transmission of information about that process to persons outside the FLRA prior to a final decision regarding the issuance of a complaint is contrary to FLRA policy and practice in a case like this. The Department's prior attempts to negotiate over the CBA were made with Council 252 of the American Federation of Government Employees (AFGE), AFL-CIO, but AFGE National has since placed Council 252 in trusteeship due to "corruption and financial malpractice." The Department continues to meet with AFGE National to discuss issues of mutual interest while the ULP charge is pending before the FLRA.

*Secretary Devos, we understand the Department has recently undergone a reorganization and it refused to bargain with the Union over the impact this reorganization would have on your Agency's employees. This has resulted in employees being moved against their will to positions for which they have not received necessary training or obtained the proper certifications. This means, for example, that employees cannot correctly advise stakeholders about laws and regulations since the Department has failed to properly train employees. You are expected to communicate with the Union about the reorganization and you are required to do so in good faith.*

*Scott Question 9.1 (QFR 9a).* Why did you refuse to talk to the Union after they requested to bargain with the agency over this reorganization which would have addressed matters such as employee training?

**ANSWER:** There was no bargaining obligation under the 2018 Collective Bargaining Agreement (CBA) and ED did not refuse to talk to the Union regarding any questions the Union might have. The Union filed unfair labor practice (ULP) charges regarding the reorganization which are pending before the Federal Labor Relations Authority (FLRA). The applicable changes to working conditions and/or conditions of employment, if any, were made pursuant to the 2018 CBA and the Federal Service Labor-Management Relations Statute. The Union was provided an opportunity to submit comments and/or input; however, the Union chose not to do so.

*Scott Question 9.2 (QFR 9b).* How are you working with the Federation to train employees for an effective and efficient implementation of the reorganization?

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**ANSWER:** The Department takes training seriously and ensures that employees continue to receive the training needed to maximize performance whether a reorganization is involved or not. The Union was previously notified of a Department-wide competency initiative to identify skill gaps and recommend/develop strategies for training and development opportunities. The Department will continue evaluating employee competencies for training and development opportunities while ensuring that all bargaining obligations are accomplished in accordance with the Federal Service Labor-Management Relations Statute and the CBA.

*Scott Question 9.3 (QFR 9c).* When should the Union should expect to hear from your office to discuss this matter?

**ANSWER:** The Department fulfilled its obligations under the Federal Service Labor-Management Relations statute and the 2018 CBA. Additionally, this matter is pending before the FLRA and the Department will continue to comply with the Federal Service Labor-Management Relations Statute, CBA, and FLRA decisions.

*The Office for Civil Rights announced in November that it was revising the Case Processing Manual, and among the specific changes was a new requirement that, “Although OCR does not have jurisdiction to enforce the First Amendment to the U.S. Constitution, as a threshold issue and throughout the processing of the complaint, OCR interprets its statutes and regulations consistent with the requirements of the First Amendment, and all actions taken by OCR must comport with First Amendment principles. OCR will not interpret any statute or regulation to impinge upon rights protected under the First Amendment or to require recipients to encroach upon the exercise of such rights.”*

*Scott Question 10.1 (QFR 10a).* How have the Office for Civil Rights, field officers, and employees implemented this requirement since its inclusion in the Case Processing Manual?

**ANSWER:** First outlined in OCR’s 2001 Revised Sexual Harassment Guidance and elaborated on in OCR’s 2003 dear colleague letter on First Amendment protections, the changes to the Case Processing Manual (CPM) reflect the long-standing position that “OCR will interpret regulatory and statutory provisions of the laws it enforces in a manner consistent with the First Amendment right to free speech.” OCR’s November 2018 CPM revisions pertaining to the First Amendment reflect OCR’s commitment to ensuring that individual rights established by the First Amendment are protected. To this end, enforcement staff consider Constitutional limitations both at the intake phase of a case and throughout the investigation to ensure that all actions taken by OCR comport with the First Amendment.

*Scott Question 10.2 (QFR 10a).* Has it resulted in investigations being abandoned or significantly affected in some way, and if so, can you describe how?

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**ANSWER:** As outlined above, the revisions to the CPM reiterate the long-standing position that OCR will interpret regulatory and statutory provisions of the laws it enforces in a manner consistent with the First Amendment right to free speech. Each case is analyzed individually, on a case-by-case basis to ensure that OCR is fully enforcing antidiscrimination laws while simultaneously considering whether the case involves aspects of free speech protected by the Constitution. OCR is unaware of any case being dismissed solely on First Amendment grounds since the CPM was amended in November 2018.

*Scott Question 10.3 (QFR 10b).* How have OCR staff been trained to implement the new Case Processing Manual requirement on the First Amendment?

**ANSWER:** As outlined above, revisions to the CPM reiterate the long-standing position that OCR will interpret the laws it enforces in a manner consistent with the Constitutional right to free speech. OCR has provided training to enforcement staff, including Regional Directors, on the November 2018 revisions to the CPM; this included training on provisions relating to the First Amendment and built on the skills enforcement staff have been using relate to the application of Constitutional principles.

*Scott Question 10.4 (QFR 10b).* Have any existing staff been reassigned to oversee implementation?

**ANSWER:** No.

*Scott Question 10.5 (QFR 10c).* How does this requirement, and specifically the observation that OCR does not have jurisdiction to enforce the First Amendment, align with the recent Executive Order directing you to “take appropriate steps, in a manner consistent with applicable law, including the First Amendment, to ensure institutions that receive Federal research or education grants promote free inquiry?”

**ANSWER:** While there is no direct connection, OCR’s prior guidance and recent revisions to the Case Processing Manual align with President Trump’s Executive Order and the President’s overall commitment to ensure that all federal laws are enforced in a manner consistent with the First Amendment.

*Scott Question 10.6 (QFR 10c).* Will this EO make additional requirements for how OCR investigates or resolves cases?

**ANSWER:** No.

*In September, Assistant Secretary for Civil Rights Kenneth Marcus indicated that the Office for Civil Rights is using a definition of anti-Semitism also used by the Department of State. This definition characterizes as anti-Semitic many constitutionally protected statements about Israel, including accusing people of “being more loyal to Israel” than to the United States, applying a “double standard for Israel,” or “denying the Jewish people their right to self-determination.”*

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*Scott Question 11.1 (QFR 11a).* For the purposes of civil rights enforcement and upholding students' First Amendment rights, is the Department of Education officially defining anti-Semitism in the manner the Department of State does?

**ANSWER:** Consistent with Executive Order 13899, in enforcing Title VI of the Civil Rights Act of 1964, OCR will consider the non-legally binding working definition of anti-Semitism adopted by the International Holocaust Remembrance Alliance (IHRA). In considering this definition, OCR will not diminish or infringe upon any right protected under Federal law or under the First Amendment. As with all other Title VI complaints, the inquiry into whether a particular act constitutes discrimination prohibited by Title VI will require a detailed analysis of the allegations.

*Scott Question 11.2 (QFR 11a).* When did the department formally adopt this definition, and how did it do so?

**ANSWER:** Executive Order 13899, "Executive Order on Combatting Anti-Semitism," was signed by President Donald J. Trump on December 11, 2019.

*Scott Question 11.3 (QFR 11b).* In investigating religious discrimination complaints, how does the department formally adopt this definition, and how did it do so?

**ANSWER:** OCR does not have jurisdiction to investigate complaints involving allegations of religious discrimination. However, OCR does enforce Title VI of the Civil Rights Act of 1964 which protects all students, including Jewish students, from discrimination based on race, color, and national origin (including language and actual or perceived shared ancestry or ethnic characteristics). As noted above, consistent with Executive Order 13899, in enforcing Title VI of the Civil Rights Act of 1964, OCR will consider the non-legally binding working definition of anti-Semitism adopted by the International Holocaust Remembrance Alliance (IHRA).

*Scott Question 11.4 (QFR 11c).* How is the department ensuring that protecting students from anti-Semitism is not chilling student' First Amendment-protected right to criticize the Israeli government?

**ANSWER:** It is OCR's long-standing policy to interpret the laws it enforces in a manner consistent with the Constitutional right to free speech. To this end, enforcement staff consider constitutional limitations both at the intake phase of a case and throughout the investigation to ensure that all actions taken by OCR comport with the First Amendment. Furthermore, Executive Order 13899 specifically prohibits agencies from diminishing or infringing upon any right protected under Federal law or under the First Amendment.

*Scott Question 11.5 (QFR 11d).* How many complaints has the department received involving anti-Semitism?



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**ANSWER:** For fiscal years 2017, 2018, and 2019, OCR has received sixty-four complaints that have been coded as national origin discrimination involving religion that include allegations of discrimination involving Jewish persons.

*Scott Question 11.6 (QFR 11d).* Of those, how many have involved criticism or commentary on Israel?

**ANSWER:** OCR's Case Management System (CMS) includes case tracking codes based on OCR's jurisdictional authority. As such, cases are not tracked or monitored based on this descriptor. Nonetheless, as indicated above, enforcement staff consider constitutional limitations both at the intake phase of a case and throughout the investigation to ensure that all actions taken by OCR comport with the First Amendment.

*The president recently signed an executive order on "Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities," which tells public universities to abide by the First Amendment, as they are already required to do, and private universities to abide by their existing policies.*

*Scott Question 12.1 (QFR 12a).* How will the Education Department implement President Trump's executive order?

**ANSWER:** The Department published a Notice of Public Rulemaking (NPRM) to implement the Executive Order on January 17, 2020. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program NPRM will be open for public comment until February 18, 2020.

*Scott Question 12.1.1 (QFR 12a.i).* Will there be conditions in new grants?

**ANSWER:** The Department published a Notice of Public Rulemaking (NPRM) to implement the Executive Order on January 17, 2020. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program NPRM will be open for public comment until February 18, 2020.

*Scott Question 12.1.2 (QFR 12a.ii).* Will the order apply to grants that have already been made? If so, how?

**ANSWER:** The Department published a Notice of Public Rulemaking (NPRM) to implement the Executive Order on January 17, 2020. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening

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Institutions Program NPRM will be open for public comment until February 18, 2020.

*Scott Question 12.2 (QFR 12b).* To what specific funding will the order apply?

**ANSWER:** The Department published a Notice of Public Rulemaking (NPRM) to implement the Executive Order on January 17, 2020. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program NPRM will be open for public comment until February 18, 2020.

*Scott Question 12.3 (QFR 12c).* Given that public universities must already abide by the First Amendment, what will be required of them, if anything, that is different from current practice when accepting grant money?

**ANSWER:** The Department published a Notice of Public Rulemaking (NPRM) to implement the Executive Order on January 17, 2020. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program NPRM will be open for public comment until February 18, 2020.

*Scott Question 12.4 (QFR 12d).* For private universities, will the condition apply to the activities of the entire university or only to the grant funds?

**ANSWER:** The Department published a Notice of Public Rulemaking (NPRM) to implement the Executive Order on January 17, 2020. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program NPRM will be open for public comment until February 18, 2020.

*Scott Question 12.5 (QFR 12e).* What will the enforcement process be, if any?

**ANSWER:** The Department published a Notice of Public Rulemaking (NPRM) to implement the Executive Order on January 17, 2020. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program NPRM will be open for public comment until February 18, 2020.

*Scott Question 12.5.1 (QFR 12e.i).* For public universities?

**ANSWER:** The Department published a Notice of Public Rulemaking (NPRM) to implement the Executive Order on January 17, 2020. The Uniform

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Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program NPRM will be open for public comment until February 18, 2020.

*Scott Question 12.5.2 (QFR 12e.ii).* For private universities?

**ANSWER:** The Department published a Notice of Public Rulemaking (NPRM) to implement the Executive Order on January 17, 2020. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program NPRM will be open for public comment until February 18, 2020.

*Scott Question 12.6 (QFR 12f).* What will penalties be, if any, for failure to comply?

**ANSWER:** The Department published a Notice of Public Rulemaking (NPRM) to implement the Executive Order on January 17, 2020. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State-Administered Formula Grant Programs, Developing Hispanic-Serving Institutions Program, and Strengthening Institutions Program NPRM will be open for public comment until February 18, 2020.

*The Department's budget proposal includes \$100 million for a new School Safety State Grant program, which you intend to help states "develop and implement interventions that enhance school safety," including recommendations from the federal commission on school safety.*

*Scott Question 13.1 (QFR 13a).* Given that the commission's final report recommends that districts and schools establish threat assessment teams, and establish central suspicious activity reporting systems, how would you ensure that these grants would not fund efforts that put students with disabilities, whose behavior may be erroneously perceived to be dangerous, at risk?

**ANSWER:** The School Safety State Grants program proposed in the President's 2020 Budget would not alter the discipline protections included in section 615(k)(1) of the Individuals with Disabilities Education (IDEA); consequently, we do not believe the proposed program would put students with disabilities at risk.

*Scott Question 13.2 (QFR 13b).* How would you establish safeguards in these grants so that students' health records are not inappropriately shared, in violation of FERPA or HIPAA, or that schools do not take advantage of these laws' exceptions in a way that puts students with disabilities at risk of being inappropriately disciplined, pushed out of school, or endangered?

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**ANSWER:** All recipients of grants from ED are required to comply with applicable statutes and regulations implementing those statutes, including the Family Educational Rights and Privacy Act (FERPA). These requirements are made clear to grantees when grants are awarded and through the *Education Department General Administrative Regulations (EDGAR)*.

Importantly, FERPA, and not HIPAA, applies to health records on students at a school, and whether the records can be disclosed is addressed by FERPA, not HIPAA. For this reason, while the implementation of the School Safety State Grants program may lead to new scenarios needing analysis in terms of student privacy, we are confident that grant recipients will be aware of their responsibilities to protect the privacy of students' education records, which includes health records.

*Scott Question 13.3 (QFR 13c).* Will you commit to ensuring that states and districts receive clear instructions to maintain complete separation between any threat assessment team and the Individualized Education Plan process, given that the latter is supposed to focus exclusively on the rights and educational needs of the student with a disability?

**ANSWER:** The Department will provide clear instructions to applicants and ensure that the program is implemented consistent with applicable law and Department regulations, including the requirements of Part B of the Individuals with Disabilities Education Act.

*Scott Question 13.4 (QFR 13c).* Will you commit to maintaining the integrity of the IEP process, by prohibiting data sharing or interactions between the threat-assessment team and the IEP team?

**ANSWER:** The Department will implement the School Safety State Grant program consistent with applicable law and regulations, including the requirements relating to Individualized Education Programs at 20 U.S.C. § 1414(d).

*On the Department of Education's website, you've referred to the Education Freedom Scholarship program, the administration's proposed \$5 billion federal tax credit that could be used for private school education, as "a vital opportunity states can seize to empower children with disabilities and their families."*

*Scott Question 14.1 (QFR 14a).* Will the schools that receive this funding be required to comply with the Individuals with Disabilities Education Act (IDEA)?

**ANSWER:** Children with disabilities deserve to benefit from both high expectations and appropriate supports, so that they are challenged to reach their full potential. Too often though, the individualized services and learning opportunities they need can be limited by existing programs and practices that prioritize the needs of the "system" over the needs of the child.

The Education Freedom Scholarship (EFS) proposal can empower children with disabilities and their families to access individualized learning opportunities, while

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relieving some of the financial pressure many families experience in obtaining additional educational support. In fact, several existing state-based scholarship programs have been designed specifically to serve and support children with disabilities, thereby meeting their individual needs. EFS would expand the ability of these scholarship programs to empower families to choose and access the learning environment they know best serves and supports their children with disabilities, and we must all honor their decisions. Under EFS, funding in the form of scholarships would go to students and their families – not schools – and allow them to take advantage of a variety of educational options, including, but not limited to:

- Educational therapies and services from a licensed or accredited practitioner or provider, including behavior therapy, occupational therapy, physical therapy, recreational therapy, social group therapy, speech therapy, and vision therapy;
- Tuition and fees at a private school of a family’s choice;
- Homeschool education expenses, including specialized curriculum and educational and therapeutic materials;
- Programs and services that support transition to postsecondary education or employment;
- Programs and services that support the early childhood needs of children with disabilities, including support for children with Developmental Delays;
- Assistive technology, including adaptive and rehabilitative devices such as prosthetics, communication boards, power lifts, refreshable Braille displays, and assistive listening devices;
- Costs of a paraprofessional or educational aide; and
- Educational and psychological evaluations to identify a child’s unique strengths, interests, and needs.

States receive IDEA Part B funds after providing assurances that they have in effect policies and procedures that meet specific statutory conditions. Among these are the requirement to make a free appropriate public education (FAPE) available to all eligible children with disabilities residing the State in specified age ranges and to provide equitable services to eligible children with disabilities enrolled by their parents in private elementary and secondary schools. LEAs have flexibility to engage in contracts with third party providers to meet their FAPE and equitable services obligations, and could use EFS to provide families with additional options to access educational services from a variety of providers, such as licensed or accredited therapists and psychologists, educational aides, accredited teachers who may provide tutoring services, and private schools.

While IDEA imposes no requirements on private schools, IDEA sets forth the rights of children with disabilities enrolled by their parents in a private school. Should students wish to receive special education and related services under IDEA, they must first go through the LEA’s child find process to be evaluated and determine whether the child has a qualifying disability and needs special education and related services because of that disability. The child-find process is one of the benefits available under IDEA to all children suspected of having a disability and is the process by which the LEA must identify, locate and evaluate children with disabilities who are in need of special

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education and related services so that they can make a free appropriate public education available to eligible children or determine whether a child placed in a private school by his or her parents is eligible to be considered for equitable services. This process is available to all children suspected of having a disability—regardless of where they go to school—at no cost to families.

*Scott Question 14.2 (QFR 14b).* Is it not the case that these children would have significantly fewer educational rights within these private school settings than they would in a public school setting under IDEA?

**ANSWER:** All children deserve access to a high-quality education that meets their needs, and many families believe that their residentially assigned public school or the traditional system provides that. But, if a family believes that their child with a disability needs services and supports beyond what is required by their IEP, or if a family believes their child is not well served in the traditional system, the Education Freedom Scholarship (EFS) proposal would empower them to access and choose a variety of educational options, including an alternate education setting.

As articulated, private school settings are one of a variety of educational options that states designing scholarship programs could include as an eligible education provider. However, states may choose to focus their programs on complementing and expanding public school students' access to special education programs and services, individualized supports, services, instruction, interventions, and therapies.

Should a state include private school settings as an eligible education provider, families of students with disabilities could then *choose* to use their scholarship funds to access a private school education program. IDEA requires local educational agencies (LEAs) where private schools are located to ensure the equitable participation of children with disabilities enrolled by their parents in private schools in programs assisted or carried out under IDEA Part B.

However, under IDEA, these students (often referred to as parentally placed students) do not have an individual entitlement to some or all of the services they would receive if enrolled in a public school. Instead, the LEA is required to expend a proportionate amount of IDEA Part B federal funds to provide services to eligible children with disabilities. Decisions about the types and amounts of special education and related services to be provided to parentally placed private school children with disabilities are made through a consultation process between the LEA or State educational agency, if appropriate, and private school representatives and representatives of parents of parentally placed children with disabilities. With this in mind, it is possible that some students will not receive services under the equitable participation provisions while others will receive them. For those who do receive services, the amount of services may also be different from what they would receive if enrolled in a public school.

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*Scott Question 15 (QFR 15).* Please provide a full-time equivalent breakdown of employees per each formula grant program authorized by the Elementary and Secondary Education Act. Please provide such breakdown for of June, 2017 as compared to April, 2019.

**ANSWER:** As of April 12, 2019, the Office of Elementary and Secondary Education had 130 staff working on ESEA formula grant programs as compared to the 181 staff working on ESEA formula grant programs on June 14, 2017.

*You have claimed that the goal of your proposed teacher vouchers is to improve teacher professional development. ESSA included a more rigorous definition requiring professional development to be "sustained (not stand-alone), intensive, collaborative, job-embedded, data-driven, and classroom-focused." LEAs are responding to the new evidence requirements under ESSA by reimagining their PD programs, shifting to cohort-based, job-embedded model.*

*Scott Question 16 (QFR 16).* Wouldn't your proposal promote precisely what ESSA discourages: one-off/single day workshops that run counter to what has been shown to be effective professional development?

**ANSWER:** Under the Department's professional development (PD) demonstration proposal, teachers seeking the stipends would be required to describe how the funds would be used to support individual development plans designed to enhance instructional or leadership skills. This requirement would ensure that selected PD activities would align with a sustained and ongoing effort to meet the specific needs of the individual teacher. Funds would be awarded competitively to LEAs, which would have the flexibility to target the program to the precise teachers or cohorts that may have unique needs not easily accommodated through their existing PD program, as well as the authority to limit stipends to evidence-based training opportunities. As an Education Innovation and Research (EIR) demonstration program, the proposal would pair the stipends with rigorous, project-level evaluations to build a repository of evidence-based practices for schools and districts to consider, driving significant improvement in the effectiveness of other sources of Federal PD funds.

*Scott Question 17.1 (QFR 17).* Please describe the strategies in state plans that move the needle on student achievement?

**ANSWER:** The Department does not endorse particular strategies as the most effective for improving student academic achievement because every student, school and State is different. The ESEA requires that a local educational agency (LEA) develop a plan for each school in its LEA that is identified for comprehensive support and improvement (CSI) and include at least one evidence-based intervention in the plan, but the LEA has the discretion to choose the intervention or strategy. Similarly, the ESEA requires that each school implementing a targeted support and improvement (TSI) plan include in that plan one or more evidence-based interventions, chosen by the school. In addition, the ESEA requires that each State annually publish the performance of its schools on its State and local report cards, including noting schools that have been identified for CSI and TSI. Taken together, the identification

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requirements and the public reporting requirements empower parents to observe which low-performing schools are responding positively to intervention over time.

*Scott Question 17.2 (QFR 17).* What innovative strategies have you seen states propose?

**ANSWER:** Strategies that States have adopted in response to the new flexibility in ESSA include creating multiple pathways for success in college and career, using meaningful measures for evaluating school quality beyond simply performance on annual assessments in reading and math, and expanding opportunities for teacher mentoring and leadership.

*Scott Question 18 (QFR 18).* How will the Department support States and districts to implement evidenced-based school improvement strategies?

**ANSWER:** The Department has hosted virtual webinars and presented at major conferences and convenings regarding the topic of evidence-based interventions under ESSA and the availability of funding for such interventions under Section 1003 of the ESEA. In addition, the Department's Institute of Education Sciences (IES) maintains the What Works Clearinghouse (WWC), which provides access to high-quality research in a user-friendly format for use by education leaders at the State, local and district levels. Lastly, the recent reorganization of OESE included the creation of a new unit called the Evidence-Based Practices Team, which will offer support and assistance to the field in identifying and using evidence-based practices.

*The Department released draft guidance last month for local and state educational agencies on drafting and publishing report cards, including information about per pupil expenditures.*

*Scott Question 19 (QFR 19).* What are the Department's plans to follow-up on the guidance to make sure states are complying with the ESSA provisions regarding specific information to be included in state accountability systems and report cards?

**ANSWER:** The Department will evaluate compliance with the requirements for State and local report cards as part of its regular monitoring process.

*In 2014, a Department of Education study estimated that it would cost \$197 billion to bring all public schools into good condition.*

*Scott Question 20 (QFR 20).* Please describe how the federal government plays a role in funding the rebuilding of our nation's public schools to get them to at least a "good condition"?

**ANSWER:** In general, educational facilities have long been considered the responsibility of State and local governments, which is appropriate, given that the predominant revenue source for public education is State and local tax revenue and given the ability for State and local entities to raise capital through bonds and other debt instruments. Consequently, the Federal government does not play a significant role in rebuilding or renovating public schools.



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*Puerto Rico received \$589 million provided by the U.S. Department of Education for recovery from Hurricane Maria, but the funding has not made it into the classrooms and schools. As a result, there is still mold and leaky roofs, and books and technology supplies have not been replaced.*

*Scott Question 21 (QFR 21).* What is the Department doing to ensure that this funding actually goes to restart school operations in schools that were hit by Hurricane Maria and not going to privatization efforts?

**ANSWER:** The Department has engaged in extensive and continuous outreach and technical assistance to Puerto Rico related to its hurricane education recovery efforts since the hurricanes made landfall in fall of 2017. In particular, it has worked to ensure the effective and timely use of all Federal hurricane education recovery funding, including Puerto Rico's Immediate Aid to Restart School Operations grant, awarded in April 2018. More specifically, the Department worked with Puerto Rico to review and approve key elements of its Restart Funding Plan, which covered a wide range of education recovery activities, including replacement of books and instructional materials, technology upgrades, professional development, supplies, and information-system improvements. The Department based its review on the list of allowable Restart activities authorized under the Hurricane Education Recovery statute; we are not aware of any proposals by the Puerto Rico Department of Education to use hurricane education recovery funds for "privatization efforts."

*In December 2018, ED and DOJ withdrew a January 8, 2014, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline and a related package of resources, asserting "that the Guidance and associated documents advance policy preferences and positions not required or contemplated by Title IV or Title VI."*

*Scott Question 22 (QFR 22).* Without the guidance, what is the Department doing to enforce Title VI of the Civil Rights Act of 1964 to ensure that students of color are not denied equal access to educational opportunities due to school discipline policies or practices that have an unjustifiable discriminatory effect or disparate impact of students of color?

**ANSWER:** Title VI prohibits discrimination based on race, color, or national origin by recipients of Federal financial assistance. States and local school districts must comply with the antidiscrimination protections contained in Title VI. The Guidance and associated documents advanced policy preferences and positions not required or contemplated by Title VI. The robust protections against race, color, and national origin discrimination guaranteed by the Constitution and Title VI remain unchanged, and OCR is committed to vigorously enforcing civil rights protections on behalf of all students. OCR will continue to conduct investigations as appropriate, to ensure that all recipients of federal financial assistance fully comply with Title VI.

*Scott Question 23 (QFR 23).* When the Office for Civil Rights investigates complaints alleging racial discrimination under Title VI based on both intentional discrimination and disparate

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impact as allowed under Title VI and its implementing regulations, do your investigators conduct a disparate impact legal analysis?

**ANSWER:** OCR’s investigative approach is based on the specific allegations raised by a complainant and determined on a case-by-case basis. Title VI regulations recognize and include a disparate impact analysis, or “discriminatory effects” test. To this end, OCR continues to enforce its regulations, which in some cases may include disparate impact analysis.

*Research shows that implicit bias, or subtle, subconscious beliefs that result in stereotypes, negatively impacts educational attainment for students of color – teachers have lower expectations for black students, which affects how well those students do in school. Implicit bias also exacerbates disparities in school discipline – teachers automatically draw more negative conclusions regarding the same behaviors exhibited by Black students than by a white students, leading to more negative disciplinary consequences for Black students.*

*Scott Question 24 (QFR 24).* What role do you think the Department should play to address this racially-biased disciplinary practices?

**ANSWER:** States and local school districts play the primary role in establishing educational policy, including how to handle specific instances of student misconduct and discipline, and in ensuring that classroom teachers have the support they need to implement appropriate discipline policies. OCR will continue to vigorously enforce Title VI, consistent with the U.S. Constitution and relevant case law.

*The Department of Education has scaled back and narrowed its civil rights enforcement, abandoning the systemic approach to investigating and resolving civil rights violations. Instead, field investigators are now instructed to investigate “systematic” or “class-action” issues only when they are raised directly in a complaint. If civil rights complaints are treated as isolated incidents, patterns of discrimination will remain concealed and remedies will be incomplete.*

*Scott Question 25.1 (QFR 25).* Do you believe that a systemic approach to civil rights in education is necessary to fully enforce civil rights laws and remedy unlawful discrimination and harassment?

**ANSWER:** Yes, there is a role for systemic investigations just as there is a role for individual investigations. However, the decision should be made on a fact-specific, case-by-case basis based on the allegations presented, the evidence collected, and the facts of the case. Regardless of the investigative approach, whether systemic or based on individual allegations, OCR is committed to fully enforcing federal civil rights laws.

*Scott Question 25.2 (QFR 25).* Are there certain types of civil rights claims that should automatically trigger a systemic investigation to resolve whether there is a pattern of discrimination?

**ANSWER:** OCR analyzes each complaint on a case-by-case basis to determine the investigative approach it will use to fully enforce federal civil rights laws. That being

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said, following that initial analysis, there are certain types of complaints that are conducive to systemic investigations. For example, cases that involve allegations pertaining to resource comparability, physical accessibility, English language learners, and Title IX athletics often result in systemic investigations.

*As part of its general rollback of civil rights enforcement in public schools, the Department has specifically reduced protections for transgender students. This includes withdrawing guidance (jointly with DOJ) providing that Title IX requires public schools to allow students to use the restroom that corresponds with gender identity.*

*Scott Question 26 (QFR 26).* Has the Department stopped investigating claims that students are being discriminated against for being transgender?

**ANSWER:** OCR has continued to investigate complaints of discrimination filed by transgender students alleging sex discrimination consistent with OCR's jurisdiction under the Federal civil rights laws that it enforces. For example, OCR is pursuing investigations in response to complaints filed by transgender students who face discrimination on the basis of sex stereotyping or harassment on the basis of sex.

*Scott Question 27 (QFR 27).* How does the Department protect transgender students that face harassment or discrimination because of their gender identity, like been denied access to bathrooms at school?

**ANSWER:** Recipients of federal financial assistance from the Department must comply with civil rights laws and provide a safe learning environment for all students, including transgender students, and OCR fully enforces Title IX. It is important to note that Congress has not given OCR jurisdiction over discrimination on the basis of gender identity. However, there are allegations of sex discrimination involving transgender students for which OCR has jurisdiction; in particular, complaints of discrimination filed by transgender students alleging sex discrimination on the basis of sex stereotyping or harassment on the basis of sex.

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REPRESENTATIVE FUDGE

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*Secretary Betsy DeVos. Secretary DeVos, per your testimony on Wednesday, April 10, 2019, in response to Congresswoman Marcia L. Fudge's assertion that "Alabama and Florida have state tax-credit programs that have shown no improvement in academic achievement", you stated: "I'm aware of the programs and you are wrong, they have shown improvement for students."*

*Fudge Question 1 (QFR 1).* Secretary DeVos, please produce peer-reviewed journals or studies to justify your assertion that the programs in question improve student achievement. Specifically, please provide data showing the impact of state tax-credit programs on students' academic grades, standardized test scores, and other measures of student educational outcomes.

**ANSWER:** A number of studies show that education freedom improves achievement for all students – both those choosing new options and those remaining in their zoned public schools. Below are examples of available evidence on these topics:

Students in public schools: According to a systematic review of private-school choice programs, 24 of 26 studies showed improved academic outcomes for students who remained in public schools after education choice programs were implemented.<sup>1</sup> For example, a study of a Florida choice program found that low-performing public schools saw a 15-point score improvement in mathematics after facing competition from nearby private schools.<sup>2</sup>

Students using scholarships: Experimental studies showed positive effects on test scores for students who participated in voucher or privately funded private school tuition scholarship programs. According to the systematic review, 11 of 16 experimental studies showed positive effects on test scores for either the full sample or at least one subsample of students studied.<sup>3</sup> For example, a study of the Milwaukee Parental Choice Program found participants scored 6.8 percentile points higher in mathematics and 4.9 percentile points higher in reading than their public school peers after 3 or 4 years of participation.<sup>4</sup>

In particular, the Alabama tax-credit scholarship program is still relatively small with fewer than 4,000 students participating and has not yet benefited from rigorous evaluation of participant effects. However, there is no reason to believe Alabama will be an outlier, and early evaluations confirm that scholarship-receiving families and students are happier in their new placements.<sup>5</sup>

<sup>1</sup> EdChoice (2019), *The 123s of School Choice: What the Research Says about Private School Choice Programs in America*, 2019 edition, retrieved from: [www.edchoice.org/research/the-123s-of-school-choice](http://www.edchoice.org/research/the-123s-of-school-choice). (A list of the 26 studies can be found on page 34.)

<sup>2</sup> Winters, Marcus and Jay Greene. "Competition Passes the Test." <http://educationnext.org/competition-passes-the-test/>

<sup>3</sup> EdChoice (2019), *The 123s of School Choice: What the Research Says about Private School Choice Programs in America*, 2019 edition, retrieved from: [www.edchoice.org/research/the-123s-of-school-choice](http://www.edchoice.org/research/the-123s-of-school-choice). (A list of the 16 studies can be found on page 15.)

<sup>4</sup> Greene, Jay P., Paul E. Peterson, and Jiangtao Du. "Effectiveness of School Choice: The Milwaukee Experiment." <https://www.uark.edu/ua/der/People/Greene/Effectiveness-of-school-choice.pdf>

<sup>5</sup> Barth, Joan M., Steele, Erika, and Quenneville, Garrett. "Evaluation of the Alabama Accountability Act: Academic Achievement Test Outcomes of Scholarship Recipients 2016 – 2017." *The Institute for Social Science Research, University of Alabama* (September 2018). [https://revenue.alabama.gov/wp-content/uploads/2018/09/AAA\\_Report\\_Independent\\_Research\\_2016-2017.pdf](https://revenue.alabama.gov/wp-content/uploads/2018/09/AAA_Report_Independent_Research_2016-2017.pdf)

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The Florida tax-credit scholarship program, which serves over 100,000 children, the majority of which are African American or Hispanic students with an average family income of \$24,000 per year, has received significant attention from researchers. Rigorous research shows that Florida's tax-credit scholarship students had higher college-going rates in two-year, four-year public, and four-year private colleges. Overall, students who began participating in FTC in elementary or middle schools were 12 percent more likely to enroll in college than non-FTC students.<sup>6</sup> Students who began participating in FTC in high school were 19 percent more likely to enroll in college than non-FTC students. Rigorous research also shows that the increased competitive pressure from by Florida's tax-credit scholarship program led to immediate general improvements in public school performance, even before students used their scholarship.<sup>7</sup>

*Secretary DeVos. Secretary DeVos, in February 2018, the Office of Personnel Management (OPM) released the "Federal Equal Opportunity Recruitment Program Report to Congress", which provided statistical data on fiscal year 2016 employment in the Federal workforce.*

*Fudge Question 2 (QFR 2). Secretary DeVos, please describe how diversity and inclusion has factored into the Department's reorganization and attrition plans.*

**ANSWER:** Diversity and inclusion factored into the Department's reorganization and attrition plans in the following ways:

- Strategic workforce planning was factored into the Department's reorganization plans for staff realignments to avoid skill gaps in mission-critical occupational categories, including managing diversity and inclusion through succession planning.
- Consistent with established procedures for reviewing all reorganizations, proposals were forwarded to the Department's Office of Equal Employment Opportunity (EEO) Services for review and clearance relative to EEO (disparate impact) and diversity and inclusion implications. The review showed that there was no disparate impact as a result of attrition or reorganization.
- The Department continues to use its hiring and recruitment strategies in striving to promote and comply with Executive Order 13548, *Increasing Federal Employment of Individuals with Disabilities*, and Executive Order 13583, *Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce*. To that end, the Department's Office of Human Resources provides consultation services to the Principal Offices allowing Human Resources Specialists to highlight different hiring authorities including Schedule A appointment and Veterans Recruitment Appointment (VRA).

<sup>6</sup> Matthew M. Chingos, Tomas Monarrez, and Daniel Kuehn (2019). *The Effects of the Florida Tax Credit Scholarship Program on College Enrollment and Graduation: An Update*. Washington, DC: Urban Institute.

<sup>7</sup> Figlio, David and Cassandra M.D. Hart. (2014). "Does Competition Improve Public Schools? New Evidence from the Florida Tax-Credit Scholarship Program." *American Economic Journal: Applied Economics*. 6(1), 133–156.

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REPRESENTATIVE SABLAN

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*Sablan Question 1.1 (QFR 1).* Secretary DeVos, what is the Department of Education’s strategy to ensure that states carry out their commitments to ESSA’s equity-focused policies as they have said they would do in their state plan?

**ANSWER:** The Department continually monitors States to ensure that they comply with the law and their individual State plans, including how low-income and minority children enrolled in schools assisted under Title I, Part A are not served at disproportionate rates by ineffective, out-of-field, or inexperienced teachers, as prohibited by ESEA section 1111(g)(1)(B). Specifically, the Department monitors how States have evaluated and publicly reported their progress under this provision, as well as how States are ensuring that LEAs receiving Title I, Part A funds identify and address any disproportionate access to educators, as required in LEA plans under ESEA section 1112(b)(2).

*In Michigan, the state committed to identifying schools for additional targeted support every three years. This is described on page 44 of the plan you approved. However, the Michigan Department of Education has apparently changed its policy and now plans to identify these schools every six years. This not only violates the state’s own plan, it also violates the law. ESSA requires these schools to be identified no less frequently than once every three years. Students should not have to languish for 6 years before being identified for support.*

*Sablan Question 1.2 (QFR 1).* How is it compliant with ESSA for schools to be identified for additional targeted support only once every six years?

**ANSWER:** The ESEA requires that a State identify schools for comprehensive support and improvement at least once every three school years and schools with one or more consistently underperforming subgroups for targeted support and improvement on an annual basis, but is silent on the frequency with which a State must identify schools for additional targeted support and improvement.

*Secretary DeVos, ESSA requires states to identify schools that need support. And it requires districts to develop and implement a comprehensive support and improvement plans for those schools. As a part of those plans, districts must identify and address resource inequities in these schools. This is critical because, so often, schools that are underperforming are also under-resourced.*

*Sablan Question 2 (QFR 2).* How is the Department of Education ensuring that school districts identify and address resource inequities to support school improvement, as required under the law?

**ANSWER:** The Department has included requirements related to ensuring States are meeting their obligations with respect to resource inequities in its State monitoring protocol, which is publicly available here:  
<https://www.regulations.gov/document?D=ED-2018-ICCD-0124-0006>.

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Specifically, under the protocol, a State must describe how it will ensure that every comprehensive support and improvement (CSI) plan identifies any resource inequities, which may include a review of school district and school-level budgeting, as required in ESEA section 1111(d)(1)(B)(iv). Similarly, the Department has also included in its protocol a question on the requirement in section 1111(d)(3)(A)(ii) of the ESEA that the State educational agency periodically review resource allocation to support school improvement.

*Secretary DeVos, when you spoke to this year's CCSSO conference, you encouraged states to seek waivers from ESSA's core requirements. Yet you've previously told the Committee that you're "implementing the law as written." While the law grants you waiver authority, Congress did not intend for the law's waiver authority be broadly used to circumvent core aspects of ESSA's bipartisan agreement.*

*Sablan Question 3 (QFR 3).* Can you commit that you will not misuse the law's limited waiver authority to circumvent core requirements and undermine Congressional intent?

**ANSWER:** The Department has and will continue to approve only those waivers that meet the conditions for approval described in Section 8401(b) of the ESEA.

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REPRESENTATIVE WILSON

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*Wilson Question 1 (QFR 1).* Secretary DeVos, are you aware of the recent, widely publicized EdBuild study that found school districts that predominantly serve students of color received \$23 billion less in funding than mostly white school districts, despite serving the same number of students?

**ANSWER:** Yes. The report excludes federal funding from its analysis and is strictly an analysis of State and local revenues. State and local revenues are administered at the discretion of the State and local jurisdictions. The study appears to suggest that public school district boundaries in the United States are “gerrymandered” in such a way that it results in inequitable State and local funding for low-income students and non-white students. The report further states that “local control of taxes benefits only the privileged few—small white districts created by arbitrary lines that can raise unfettered money for their schools.” Lastly, the report indicates, “As a general rule states haven’t kept up with the gaps created by an inherently unequal distribution of wealth in a racially fractured society.”

*Wilson Question 1.1 (QFR 1a).* Do you find this statistic troubling and what specific actions has your department taken to increase targeted funding to school districts serving predominantly low-income students of color?

**ANSWER:** Most Department funds are allocated on the basis of statutorily determined formulas that take into account district poverty levels and thus target resources to students from low-income families. Such formulas also generally drive funds to districts and schools serving high numbers of minority students. For example, the Title I Grants to Local Educational Agencies program serves more than two-thirds of Black and Hispanic students, compared to just one-third of White students.

*Wilson Question 1.2 (QFR 1b).* What is the federal role in supporting low-income districts to deliver a quality public education for every child when states refuse to provide the necessary resources?

**ANSWER:** The Department has no role in evaluating the adequacy of available State and local funding for public education. Further, ESEA Section 1605 expressly prohibits any mandate requiring equalized spending per pupil for a State, school district, or school.

The Department does have a role in ensuring that Federal funds are used to enhance services and are not used to replace basic operating costs or functions. Specifically, the Title I, Part A program, which is intended to improve academic achievement of disadvantaged students and for which funds are allocated to States and school districts based on their relative numbers of low-income students, includes three fiscal requirements that States and districts must follow. These are:

- Supplement, not supplant;
- Maintenance of effort; and
- Comparability.



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These requirements ensure that a school district uses its Federal funds to supplement, and not to supplant, State and local funds that a Title I school would otherwise receive; that a school district receives all of its Title I, Part A funds only if it maintains its fiscal effort from the prior year; and that services funded by State and local funds in Title I schools, taken as a whole, are comparable to services funded by State and local funds in non-Title I schools. The Department evaluates compliance with these fiscal requirements as part of its regular monitoring efforts.

*Secretary DeVos, as I'm sure you are aware, it has traditionally been the role of the federal government to help close such gaps. Because public school financing continues to be so inequitable, federal funds are targeted to the highest poverty areas. That means that not all districts are equally reliant on federal dollars. Your budget proposed new spending on charters and private schools but would cut 12% of the overall education budget and \$5.1 billion in K-12 public education programs. This includes the elimination of Title IV-A Grants, which support the education of the neediest and, often, lowest-income student populations. These grants facilitate equity and diversity training, and support social emotional learning, violence prevention, trauma-informed classroom management, and safe and supportive learning environments. Cutting Title IV-A grants would leave needy school districts with even fewer resources and would be most felt by already underserved student populations.*

*Wilson Question 2.1 (QFR 2a).* How do you defend this proposed cut in light of the existing \$23 billion racial funding gap?

**ANSWER:** The Administration strongly believes that Federal investments in education should be focused on programs most likely to help improve outcomes for our Nation's students, especially the disadvantaged. That is why the President's Budget, even in the face of tough fiscal constraints, continues to protect key formula-grant programs serving our most vulnerable students, including the \$15.9 billion Title I Grants to Local Educational Agencies program, the \$12.4 billion Special Education Grants to States program, and the \$737 million English Learners Acquisition State Grants program. However, we believe that the Title IV-A Student Support and Academic Enrichment grants program is poorly structured and insufficiently targeted to deliver meaningful support to our neediest students. For example, even at the fiscal year 2019 funding level of \$1.17 billion, the formula-grant structure of the Title IV-A Student Support and Academic Enrichment Grants program results in allocations of less than \$30,000 for an estimated two-thirds of school districts, more than half of which receive only the minimum subgrant of \$10,000. Limited Federal education resources should not be invested in a program under which most local awards are too small to have a meaningful impact.

*Wilson Question 2.2 (QFR 2b).* I assume that your department has conducted a rigorous evaluation of Title IV-A grant uses for you to reach that conclusion. Is that true and can you share that district-level data with Congress?

**ANSWER:** The Department is evaluating how districts are spending Title IV-A funds, as well as how states are spending funds reserved for state-level activities. Title IV-A is a

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new program that first received funding in FY17, so no prior evaluations have been conducted and no data is currently available. The Department will publicly share the data when the evaluation is done.

*Wilson Question 2.3 (QFR 2c).* Public schools, which you are charged with defending, are severely underfunded, and as I just highlighted, low-income, majority-minority districts have the greatest funding needs. Congress authorized Title IV-A grants to promote a safe, well-rounded education for all students. You are directly undermining this goal. Do you believe it is your departments' duty to help close the stark funding inequities of public school districts?

**ANSWER:** The Department has no role in evaluating the adequacy of available State and local funding for public education nationwide. Further, ESEA Section 1605 expressly prohibits any mandate requiring equalized spending per pupil for a State, school district, or school. The Department does enforce the fiscal requirements of Title I, Part A of the ESEA, which requires that Title I, Part A funding supplements, and does not supplant, State and local funds; that a school district receive all of its Title I, Part A funds only if it maintains its fiscal effort from the prior year; and that services funded by State and local funds in Title I schools taken as a whole be comparable to services funded by State and local funds in non-Title I schools.

*You have done nothing to support Title IV-A's implementation or properly evaluate its effectiveness even though we've heard from educators all over the country on what it means for their students. I've heard from educators in my community who are deeply concerned by your proposed cuts. In my district alone, Title IV-A funds are being used to provide the following services:*

- youth Mental Health training to 2500 staff;
- academic and social-emotional support for homeless students;
- FAFSA Completion workshops for students and parents;
- parent workshops on college and career readiness;
- and the professional development of teachers to be more responsive to the needs of diverse student populations.

*Wilson Question 2.4 (QFR 2d).* Can you name specific actions your department has taken to increase targeted funding to school districts serving predominantly low-income students of color?

**ANSWER:** The President's budget requests have consistently protected formula grant programs serving predominantly low-income students of color, including the \$15.9 billion Title I Grants to Local Educational Agencies program and the \$737 million English Learners Acquisition State Grants program.

*Secretary DeVos, recently Florida's Gov. Ron DeSantis stated that when it comes to "public dollars, it's public education." You agreed with him on Twitter.*

*Wilson Question 3.1 (QFR 3a).* Do you think charter schools are succeeding in Florida?

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**ANSWER:** The Florida Department of Education (FLDOE) recently released its annual statewide analysis of student achievement in charter schools compared to the achievement of comparable students in traditional public schools. The FLDOE data reveals that charter schools received an “A” school grade at a significantly higher rate than traditional public schools. Additionally, charter schools had a higher percentage of students scoring Level 3 or above on both the Math and English Language Arts end-of-course exams, reducing the achievement gaps for African-American and Hispanic students, as well as students receiving free and reduced-price lunch and English Language Learners. Academic growth was also more prevalent among charter school students, with 59% of students making gains in English Language Arts and 60% of students making gains in Math, compared with 54% and 57%, respectively, among traditional public school students. Please see <http://www.fldoe.org/core/fileparse.php/7778/urlt/SAR1819.pdf> (pages 24, 30)

*While some charter schools in Florida have been successful, there are numerous instances where charter schools have failed. The NAACP, in 2016, passed a resolution calling for a moratorium on charter schools until the numerous problems in this sector are fixed. Those problems include financial mismanagement, fraud, barriers for low-income students and students with disabilities to enroll, and abrupt school closures that leave parents and students adrift. There are more than 650 charter schools in Florida, with more than 290,000 students enrolled. About 20 charter schools close each year. Many charter schools are run by for-profit management companies, have failed on their promises of reform, have failed Florida's students and have cost taxpayers millions of dollars that taxpayers will never be able to recover.*

*Wilson Question 3.2 (QFR 3b).* How do you validate a system that loses millions of tax dollars, with no educational benefit to students while depleting public school funds?

**ANSWER:** As noted in the previous response, Florida has reported academic achievement data from the charter school sector showing significant academic benefit in math and English language arts, as well as progress in closing achievement gaps. Charter schools are public schools and are designed to receive operational autonomy in exchange for increased accountability for results. Pursuant to Florida’s charter school law, schools that make insufficient progress in attaining the student academic achievement objectives outlined in the charter are to have their charters revoked. The closure of low-performing charter schools ensures that students are not stuck in schools that are not meeting their academic needs.

*Wilson Question 3.3 (QFR 3c).* Do you believe there should be more financial disclosures and rules on how charter schools spend their federal funding?

**ANSWER:** Charter schools have strict requirements on financial disclosures, which have been continually strengthened in recent years. Since 2010, all Charter Schools Program (CSP) State Educational Agency (SEA) grantees have been required to demonstrate that each authorized charter school in the state is required to conduct annual, timely, and independent audits of financial statements that are filed with the authorized public chartering agency. Additionally, the CSP State Entities program authorizes State

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entity grantees to allocate a portion of awarded funds to improve authorizing quality as well as conducting fiscal oversight and audits of charter schools.

Every recipient of Federal funds, including charter schools, is required to have a financial management system that enables the recording and reporting of grant expenditures to ensure that funds have been used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award. The Department takes its responsibility to protect the Federal dollar seriously and has attempted to balance this interest with the need for charter schools to have freedom to innovate in order to meet the high performance standards established in their charters.

*Wilson Question 3.4 (QFR 3d).* What has your Department done to prove to taxpayers and parents that the charter school sector has improved?

As of the 2016-2017 academic year, some 284,000 students, or about 10 percent of Florida's 2.8 million students enrolled in the pre-kindergarten-through-high school-system, attended charter schools. Hundreds of millions of Federal dollars go to improve and expand charter schools each year, but I'm still hearing from constituents about these schools not being a part of the community fabric in Florida. And I don't use those words lightly, public schools are supposed to be the great equalizer, but also an institution that provides common ground for all of us. When traditional public schools open their doors to hurricane victims, while charter schools slam their doors shut they destroy the fabric of community, when charter school developers leave an abandoned building behind because the profits weren't large enough they are also abandoning the community.

**ANSWER:** Growing evidence has demonstrated that charter schools are increasing academic achievement and improving long-term student outcomes. A recent Stanford University study found that charter school students in New York City gained an additional 23 days of learning in reading and an additional 63 days of learning in math over their district school peers [https://credo.stanford.edu/sites/g/files/sbiybj6481/f/nyc\\_report\\_2017\\_10\\_02\\_final.pdf](https://credo.stanford.edu/sites/g/files/sbiybj6481/f/nyc_report_2017_10_02_final.pdf) (page 8). With such high performance, it's no surprise that New York City charter schools had over 50,000 applicants placed on waitlists as of Spring 2018 <https://www.nyccharterschools.org/sites/default/files/resources/NYCCSC-LotteryReport-2018-19.pdf> (page 3 fig 1). Parents across the country are recognizing the opportunities a high-quality charter school can present for their children.

*Wilson Question 3.5 (3e).* What data does the department have to show that these schools are actually improving at management and accountability?

**ANSWER:** Only 1.7% of charter schools awarded funds through the CSP since 2006 closed before their second year of operation, and the vast majority (85%) of them were funded prior to 2013. Volatile opening and closing of CSP-funded charter schools has become an increasingly rare occurrence, suggesting that SEAs and other State entities have become more selective in the subgrant award process. This is likely due in part to the Department's increased oversight following the 2011 OIG audit as well as language

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inserted into appropriations legislation by Congress starting in 2011 that is focused on authorizer accountability, which was memorialized in the CSP SEA final rule in 2015 and continued within the changes in ESSA to improve authorizing practices.

*Every child has the right to a high-quality education and an engaging learning environment. We must invest in our public schools and teachers to make certain that, regardless of the income or level of education attained by their parents, every child has access to an equitable, high-quality public school. This is the way to truly make America great. With two of the largest school districts in the country located in my Congressional district, I am very concerned about the Administration's proposed budget cut of 12 percent or \$8.8 billion from the Department of Education's budget. This could have a financial impact of more than \$26 million alone for Broward County Public Schools and would be devastating to school districts nationwide.*

*Wilson Question 4 (QFR 4).* Considering the lack of local resources, what is the alternative federal program for the Title IIA Supporting Effective Instruction (SEI) State Grants program for teacher professional and leadership development that is eliminated in the proposed budget?

**ANSWER:** States and school districts bear primary responsibility for recruiting, training, and retaining the teachers and school leaders needed to staff high-performing schools; the purpose of the Title II-A Supporting Effective Instruction (SEI) program is to supplement, and not replace, State and local funding for these activities. However, any LEA that identifies teacher professional development as a strategy for responding to a comprehensive needs assessment may use Title I, Part A funds for that purpose, as well as for other locally determined efforts to recruit, train, and retain effective teachers and school leaders.

*Recognizing the enormous benefits and return on investment of the 21st Century Community Learning Centers (CCLC) program, I recently joined more than 100 of my colleagues on a letter to the Appropriations Committee leadership about preserving this vital program. The letter included reference to an independent report, released just last month, that found that after school "programs improved a wide range of outcomes including student attendance, achievement in mathematics and English; grade promotion and graduation rates, and student health and fitness. This research spans the country, all age groups and wide variety of indicators of well-rounded student success."*

*Wilson Question 5 (QFR 5).* And, with such broad bi-partisan support by Congress, what does the Administration seek to gain by eliminating such a successful program that benefits nearly 10,000 communities across the country?

**ANSWER:** The Administration recognizes that many afterschool programs demonstrate a range of positive impacts but disagrees that the 21st Century Community Learning Centers program (CCLC) provides enormous benefits and a high return on investment. Performance data for the 21<sup>st</sup> CCLC program show that only about half of the program's regular participants demonstrate improved grades in English and mathematics, and far less than half of regular participants who start the school year as "not proficient" in

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reading and mathematics reach proficiency by the end of the school year. For example, in 2017, only 25 percent of elementary school program participants improved from "not proficient" to "proficient" or above on State assessments in reading, and only 19 percent of middle and high school program participants made similar gains in mathematics. Moreover, on average, nearly half of student participants attend local programs less than one day a week during the school year, strongly suggesting that the program is far from essential for many, if not most, students and, thus, is not a priority in the fiscally responsible budget proposed by the President.

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REPRESENTATIVE TAKANO

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*Secretary DeVos, the last two quarterly reports released by the Department of Education on Borrower Defense to Repayment show data on claims through September 2018 and December 2018. According to these reports, a couple thousand claims have been closed by the Department, but no claims have been approved. During your testimony on April 10, 2019 you mentioned that your Department has processed claims for closed school discharges.*

*Takano Question 1.1 (QFR 1).* What is the Department's process for selecting the order for reviewing Borrower Defense claims?

**ANSWER:** Prior to the summer of 2017, the Department focused primarily on applications from former Corinthian Colleges, Inc (CCI) students, which made up the vast majority of the nearly 100,000 borrower defense applications filed as of that time. Since then, the Department has received thousands of applications from students who attended schools other than CCI and directed resources to address the non-CCI applications. The Department has also begun adjudicating ITT claims.

*Takano Question 1.2 (QFR 1).* When I asked you why the number of 'closed' claims had grown while 'approved' claims had remained stagnant you stated that you were prioritizing closed school discharge claims. In the Department's quarterly reports to Congress on its implementation of Borrower Defense, do you count closed school discharge claims as 'closed'?

**ANSWER:** Borrowers typically may apply for more than one type of discharge related to the borrowers' federal loans if an institution closes. The Department includes in our "closed" application numbers those borrowers who submitted a borrower defense to loan repayment application, but received a closed school loan discharge while their borrower defense application was pending. This means that while the Department does not include in our numbers for borrower defense *all* closed school discharges, there may be borrowers who received a closed school discharge and submitted a borrower defense application in the count of closed applications included in our quarterly congressional reports.

*Takano Question 1.3 (QFR 1).* Excluding those closed school discharges, what are the most common reasons that the Department closes Borrower Defense claims?

**ANSWER:** In cases where borrowers receive a different type of discharge (closed school, automatic closed school, false certification, or total and permanent disability), the borrower defense to repayment application associated with the borrower is closed because there are no remaining federal Direct Loans to discharge related to the closed application. A small number of applications are closed because borrowers withdraw their application(s) or do not respond to multiple requests to contact us about an incomplete application. This differs from applications that are ineligible because, for example, the borrower does not have Federal loans, or because the claim was found to lack merit. Finally, some applications are closed because the borrower does not have eligible federal

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loans to discharge. To clarify, “closed” applications differ from ineligible applications. Ineligible applications that are processed, and closed applications are tracked separately.

*Takano Question 1.4 (QFR 1).* Can you please provide a breakdown of all the claims that have been closed during your tenure?

**ANSWER:** Between January 20, 2017 and June 30, 2019 there have been 16,155 applications approved, 9,077 applications deemed ineligible, and 5,534 applications closed.

*Takano Question 2 (QFR 2).* Secretary DeVos, is the Department of Education selecting Borrower Defense applications for review with the intent to close them over approving them?

**ANSWER:** No.

*Secretary DeVos, in your testimony on April 10, 2019 you stated that no Borrower Defense claims have been approved since a federal court ordered the Department to implement Borrower Defense.*

*Takano Question 3.1 (QFR 3).* Please explain how you are implementing Borrower Defense by describing the specific steps that the Department has taken in response to this decision and when the Department took those steps.

**ANSWER:** The Department began to take steps to implement the borrower defense regulations issued on November 1, 2016 shortly after the Federal court decision invalidating the regulations we had issued to delay the effective date of those regulations. The Department quickly implemented the automatic closed school discharge provision which provided immediate relief to students who had been enrolled at Corinthian Colleges at the time of the institution’s closure and who had not enrolled at a new institution within 3 years. We continue to process automatic closed school loan discharges for borrowers who attended other closed schools, based on the three year timeline. We published a formal notice in the Federal Register on March 15, 2019 and, at the same time, issued guidance to program participants addressing implementation issues. The Department has also implemented the provisions in those regulations relating to adjudication of borrower defense claims, but since these apply to loans made after July 1, 2017, most of the current borrower defense claims will continue to be adjudicated under the regulations published in 1994. The guidance requires institutions to retroactively report certain information to the Department dating back to July 1, 2017. This includes the requirement that all institutions must report all legal actions taken or filed against it. The Department will soon begin consumer testing to identify the most effective way to provide information to students regarding repayment rates.

*Takano Question 3.2 (QFR 3).* Please describe the lifecycle of a Borrower Defense claim including average timeframes at each step. In other words, what are the steps that a claim must go through after it is submitted before it is either approved, denied, or closed?



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**ANSWER:** Under the Department’s plans, the borrower defense lifecycle includes intake, adjudication, relief determination, and post-determination processing. After the borrower submits an application, it goes through an initial intake process. The intake process verifies that the borrower’s application is complete. Next, the application goes through the adjudication process during which the borrower defense group performs a careful review of the allegations levied against the institution, assesses the evidence provided, and evaluates the applicable state law or federal standard. After the application is adjudicated, we will determine the amount of relief that the borrower should receive. Finally, the adjudicated applications go through a post-determination process during which the borrowers are notified of the Department’s decision including if the application is closed. After the borrower receives a communication, the borrower’s loan servicer is notified of the outcome and provided with instructions to process the approval, ineligible, or closure, if necessary. The Department then monitors the servicer’s actions to ensure that the servicer carried out the instructions.

The most recent external reporting on our progress in adjudicating borrower defense claims can be found in the Federal Student Aid Data Center:  
<https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/borrower-defense-data>.

*Takano Question 3.3 (QFR 3).* Please include how many claims are at each stage of the process as of the date that you send your response.

**ANSWER:** Please see our response to Takano Question 3.2.

*In November 2018, Veterans and Military Service Organizations wrote a letter (here) to the Department of Education requesting action on Total & Permanent Disability (TPD) loan forgiveness for disabled veterans. The letter revealed that, according to a FOIA response the Department has wrongly put into default half of the totally disabled veterans who were identified to the Department of Education by the Veterans Affairs Department as those who are statutorily entitled to TPD loan forgiveness. When they are put into default, the Treasury Department can then seize their disability living allowance.*

*In addition, as the FOIA response shows, only 1 in 5 eligible veterans have filled out the TPD paperwork. Since 100% of disabled veterans may have difficulty filling out the paperwork, this is a problem calling for urgent attention.*

*Takano Question 4 (QFR 4a).* Would you please report back with a 30-day plan on how the Department of Education plans to bring the eligible disabled veterans out of default, and the plan on how to help the other eligible veterans achieve TPD discharge?

**ANSWER:** On August 21, President Trump signed a Presidential memorandum to automatically forgive federal student loan debt for totally and permanently disabled veterans unless they decide to opt out of the process. Veterans will still have the right to weigh their options and to decline loan discharge within 60 days of notification of their eligibility. Veterans may elect to decline loan relief either because of potential tax

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liability in some states, or because receiving loan relief could make it more difficult to take future student loans. Eligible veterans who do not opt out of the program will have their remaining student loan balance discharged and will be reimbursed for payments made following the date of their disability discharge. The Department has published an Interim Final Rule in order to make the regulatory changes needed to eliminate the application requirement. Prior to the IFR, the Department's regulations required eligible veterans to submit an application.

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REPRESENTATIVE ADAMS

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*Secretary DeVos, the Education Corporation of America (ECA) closure was the largest since ITT Tech, another ACICS accredited school. In your decision to re-recognize ACICS, you indicate that its accreditation standards effectively address the quality of its institutions' fiscal and administrative capacity.*

*Adams Question 1 (QFR 1).* How can you justify that perspective when dozens of ACICS accredited schools close annually?

**ANSWER:** ACICS had appropriately identified the financial challenges ECA was experiencing and properly placed the institutions on show-cause. It is important to recognize that other institutional accreditors have faced unexpected school closures this year, including regional accreditors such as the Higher Learning Commission, the New England Commission of Higher Education, the Western Association of Schools and Colleges, and Middle States Commission on Higher Education.

*Secretary DeVos, in your re-recognition decision, you recommended ongoing monitoring of ACICS on four criteria to make sure the agency is complying with federal regulations.*

*Adams Question 2 (QFR 2).* Can you describe specific actions your team is conducting to implement your plan to monitor and determine whether ACICS meets federal criteria?

**ANSWER:** The Department found ACICS to be in noncompliance in two criteria- 602.15(a)(2) and 602.15(a)(6) - that require a compliance report within 12 months. The Accreditation Group, within the Office of Postsecondary Education, will process that compliance report per 602.32. The compliance report was submitted to the Department on December 19, 2019, and will be presented at the summer 2020 NACIQI meeting.

A monitoring report, addressing the issues below was submitted on December 20, 2019, but is separate and independent of the compliance report. The monitoring report will be reviewed by Accreditation Group staff.

## Monitoring areas:

- 602.15(a)(1) – Audited financial records and a staffing report (Note: the audited financial records are required to be submitted annually for three years.)
- 602.16(a)(1)(i) – An annual report on the function and effectiveness of ACICS' Placement Verification Program (PVP).
- 602.16(a)(1)(vii) – An annual report on the work of ACICS' At Risk Institutions Group (ARIG) and actions taken by the agency, if any.
- 602.19(b) – An annual report on the work of ACICS' At Risk Institutions Group (ARIG) and actions taken by the agency, if any.

*Adams Question 3 (QFR 3).* Secretary DeVos, what is a single specific step that the Department has taken to monitor ACICS after you re-recognized them in December?

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**ANSWER:** Please see the response above that details several specific steps the Department has taken to monitor ACICS.

*Adams Question 4 (QFR 4).* Secretary DeVos, will the Department seek public comment or require the reports required by your monitoring plan to be reviewed by the National Advisory Committee on Institutional Quality and Integrity?

**ANSWER:** The Accreditation Group (AG), within the Office of Postsecondary Education, will process that compliance report per 602.32. The monitoring report will be reviewed by AG staff. If the monitoring report is unsatisfactory, staff may elect to refer it to NACIQI for review.

*Secretary DeVos, the tone of your ACICS decision letter is incredibly confident that ACICS is meeting all standards where Secretary King found shortcomings.*

*Adams Question 5.1 (QFR 5).* Since you are requiring ACICS to submit reports on its compliance with these standards, will you commit to publicizing the reports?

**ANSWER:** Yes. 34 C.F.R. 602.32 requires the Department to provide notice of the review of compliance reports in the Federal Register for public comment.

*Adams Question 5.2 (QFR 5).* If not, what is your justification for this lack of transparency around a highly controversial decision?

**ANSWER:** Please see the response above.

*Secretary DeVos, Historically Black Colleges and Universities (HBCUs) have the following to say about inequities in the accreditation system:*

- *The peer review process allows too many personal biases to enter the process and have negative impacts, especially for small, low-resourced institutions.*
- *True “peers” that reflect an institution’s size, locale, sector, resources and outcomes generally do not comprise the majority of a campus review team.*
- *Standards are applied without consideration of institutional size, scope, programmatic offerings, resources, endowments, etc. requiring institutions with minimal resources to be evaluated using the same criteria as some of the best endowed institutions in the country.*
- *Accreditors tend to shift what is required of institutions on sanction leading to a belief that when institutions reach a state of extreme difficulty in meeting the standards, the accreditor would rather remove them from membership instead of providing them with any additional opportunity to rectify their problems.*
- *The degrees of progress are not taken into account when an institution has been on sanction for two years.*

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*Adams Question 6 (QFR 6).* Do you believe that inequities exist in our accreditation system and do you believe that action could and should be taken by the Department to correct these inequities?

**ANSWER:** The accreditation regulations require accreditors to monitor an institution's financial stability. Institutions facing financial challenges will be required to come into compliance with the accreditor's standards, and when they cannot, accreditors will apply sanctions including potentially loss of accreditation. We will review the recent report prepared by the United Negro College Fund (UNCF) to better understand their concerns. Our Final Accreditation and State Authorization regulations address the need for accreditors to establish mission-driven accountability standards, which includes evaluating an institution's financial position based on its size, mission and other factors.

*Secretary DeVos, in April 2017, your Department announced they were ending an experiment to limit the amount of unsubsidized loans a student could take out. To date, no conclusions or information about the outcome of this experiment has been released by the Department. Existing borrowing practices and the increasing amount of student debt are important issues to this committee and most importantly, to American families. The results of this experiment could provide useful information in how Congress approaches student borrowing in an upcoming HEA reauthorization.*

*Adams Question 7 (QFR 7).* Will you commit to releasing the results of this experiment and if so, when can we expect such a release?

**ANSWER:** The Department plans to make available to the authorizing committees a report on the Limiting Unsubsidized Loan Amounts Experiment, as required under Section 487A of the Higher Education Act of 1965, as amended (HEA). The report will include a list of participating institutions and the specific or regulatory waivers granted to each institution; the findings and conclusions reached regarding the Experiment and recommendations for amendments to improve and streamline the HEA, supported by the results of the experiment.

*Secretary DeVos, in order to provide child care support to only two percent of student parents with children ages 0-5 who are eligible for the Pell grant, CCAMPIS funding would need to reach \$150 million annually. Your administration's budget is cutting support for child care on college campuses with the intent of expanding employer investment in child care. While we know many students are working, the needs of students are distinctly different than the needs of employers.*

*Adams Question 8 (QFR 8).* Don't you think this is an important difference, and shouldn't we continue to support student parents through CCAMPIS?

**ANSWER:** The President's budget request reflects the Administration's continued commitment to investing in child care access. Specifically, the Administration prioritized such spending by requesting a one-time \$1 billion investment through the Department of Health and Human Services to build the supply of child care and stimulate employer

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investment in child care. The Administration also requested \$15.1 million for the CCAMPIS program, which returns the program to its historic funding levels.

*Secretary DeVos, about 45 percent of community college students did not purchase or rent the required materials for a course on at least one occasion because they could not afford the materials. Today's students typically spend between \$1,240-\$1,440 on books and supplies each year, but open educational resources can save students between \$66 and \$121 per course.*

*Adams Question 9 (QFR 9).* As Congress is currently working to reauthorize the HEA, will you commit to sharing information and results about the open educational resources pilot program with this Committee?

**ANSWER:** Yes. The Open Textbooks Pilot grantees are required to submit final performance reports to the Department two years after receiving a grant. The first grant under the program was awarded in October of 2018. The Department will evaluate specified performance measures in assessing Open Textbooks Pilot program grantees and make such evaluations available to Congress.

*Adams Question 10 (QFR 10).* Secretary DeVos, the list of for-profit institutions which committed fraud is extensive. Do you think we should eliminate the 90/10 Rule that is currently in place?

**ANSWER:** The list of institutions accused of committing fraud is long, but the list of court rulings that confirmed the accuracy of these allegations is quite short. It is unclear how allegations of fraud are connected to the 90/10 Rule, which only Congress can change.

*Adams Question 11 (QFR 11).* Secretary DeVos, why would you let programs that have repeatedly put students in unsustainable debt continue to get funds from the government?

**ANSWER:** With fewer than 25 percent of all borrowers paying down their student loan balances, the Department is concerned that the large majority of programs are leaving students with debt they cannot repay. We urge Congress to examine the role that rising debt limits and expanded income-driven repayment programs have played in burying students in debt.

*Secretary DeVos, it has been almost 65 years since the ruling in Brown V. Board of Education. Today, its promise remains unfulfilled. In many respects, America's public schools continue to be "separate and unequal." Indeed, the growing resegregation of American schools by race and ethnicity, compounded by economic class segregation, has become the dominant trend in American education.*

*Adams Question 12 (QFR 12).* What role should the Office of Civil Rights play to ensure all public schools are equal for all students?

**ANSWER:** OCR plays a vital and important role in vigorously enforcing civil rights laws in our nation's schools to ensure that every student has access to a high-quality

EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

education. OCR remains committed to its mission of vigorous enforcement of the civil rights statutes under its jurisdiction.

EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

REPRESENTATIVE DESAULNIER

*Secretary DeVos, GAO made four recommendations to the Department regarding the Public Service Loan Forgiveness (PSLF) program and, per the GAO’s website, none of them have been implemented. You disputed the GAO’s categorization of these recommendations as “Open.”*

*DeSaulnier Question 1.1 (QFR 1).* What has the Department done to specifically implement the GAO’s recommendations?

**ANSWER:** FSA concurred with all four of GAO’s recommendations. It has already complied or is in the process of complying with all four of the GAO’s audit recommendations.

GAO Recommendation	FSA Action
1. FSA should develop a timeline for issuing a comprehensive guidance and instructions document for PSLF servicing.	As the policy and guidance for the PSLF Program are finalized, FSA will deliver completed chapters of the servicing manual on an iterative basis, determined by the priorities identified in servicing. FSA anticipates completing the first chapters by March 2020.
2. FSA should enhance borrowers’ ability to determine which employers qualify for PSLF.	In December 2018, FSA implemented an online PSLF Help Tool. The tool helps borrower assess whether their employers qualify for PSLF, among other functions. Later this year, FSA will implement the tool into the new Next Gen digital and customer care platform and begin adding additional functionality.
3. FSA should standardize the information the PSLF servicer receives from other loan servicers.	FSA has worked with all federal loan servicers to update their PSLF file layouts to ensure standard reporting across servicers. These updates have been completed by every servicer except one, whose file layout corrections will be completed March 2020.
4. FSA should ensure that borrowers receive sufficiently detailed information from the PSLF servicer to be able to identify any errors in the servicer’s counts of qualifying payments.	FSA is reviewing all PSLF borrower communications from the PSLF servicer to ensure that borrowers receive sufficiently detailed information regarding payment counts and repayment history. New functionality being considered under the Next Gen FSA initiative is expected to provide borrowers with real-time, self-service access to information about their eligibility for PSLF and progress towards completion.

*DeSaulnier Question 1.2 (QFR 1).* What plans does it have to implement the remainder, and on what timeline?



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**ANSWER:** See answer above.

*DeSaulnier Question 2 (QFR 2).* Secretary DeVos, Have you required FedLoan to provide a simple way for borrowers to check on the number of qualifying repayments they have made for PSLF?

**ANSWER:** FedLoan provides borrowers participating in PSLF with access to a secure portal that provides a variety of information, including the number of qualifying PSLF payments they have made.

*DeSaulnier Question 3 (QFR 3).* Secretary DeVos, Have you directed FedLoan to provide information and guidance to borrowers who are submitting employment certificates but are not making qualifying loan repayments?

**ANSWER:** FedLoan provides borrowers who submit ECFs, but are not enrolled in qualifying repayment plans, with notices that include information about actions they must take to qualify for PSLF, including changing to a qualifying repayment plan.

*DeSaulnier Question 4 (QFR 4).* Secretary DeVos, Have you created an electronic version of the employment certification form and allowed electronic signatures by employers? Why or why not?

**ANSWER:** As part of the NextGen Servicing and Processing Environment, FSA has obligated funds under the Digital and Customer Care contract to develop and launch Phase Two of the PSLF Help Tool, which we expect to include functionality that permits borrowers to electronically sign PSLF-related forms, submit ECFs and PSLF applications, and track the status of their documents. Implementation of Phase Two will likely occur within fiscal year 2020.

*DeSaulnier Question 5 (QFR 5).* Secretary DeVos, Have you created an electronic application form for loan forgiveness that alerts applicants if they have failed to provide required information? Why or why not?

**ANSWER:** FSA has obligated funds under the Digital and Customer Care contract to develop and launch Phase Two of the PSLF Help Tool, which we expect to include functionality that permits borrowers to electronically sign PSLF-related forms, submit ECFs and PSLF applications, and track the status of their documents. Implementation of Phase Two will likely occur within fiscal year 2020.

*Secretary DeVos, In the FY 2018 appropriations bill, Congress established the Temporary Expanded Public Service Loan Forgiveness (TEPSLF) program to assist public servant who had made loan repayments to the wrong repayment plan. The Department of Education was supposed to create an easy process for borrowers to correct for its poor implementation of the PSLF program. As of March 25, your Department had approved just 262 borrowers under the temporary program, out of 9,820 applications. This means the Department has denied 97 percent of applications.*

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*DeSaulnier Question 6 (QFR 6).* What has the Department told these borrowers that have been denied?

**ANSWER:** Borrowers whose TEPSLF requests are denied are provided a notice that explains the reason for their denial and the next steps the borrower should take based on that reason.

*DeSaulnier Question 7 (QFR 7).* Secretary DeVos, Has the Department informed these borrowers that they may be eligible for TEPSLF after they have made repayments for 10 years?

**ANSWER:** Borrowers whose TEPSLF requests are denied are provided a notice that explains the reason for their denial and the next steps the borrower should take based on that reason. If applicable to the borrower's specific reason for denial, the borrower is informed that he or she may be eligible for TEPSLF after making 120 qualifying payments.

REPRESENTATIVE MORELLE

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*At some point in January 2019, students enrolled at Argosy did not receive their credit balance refunds – i.e. cost of living stipends – for the 2019 spring semester from the Department. These students rely on stipends to pay for necessary expenses throughout the semester, such as food, gas, and rent.*

*Morelle Question 1 (QFR 1).* When and how was the Department made aware of the fact that students had not received these stipends?

**ANSWER:** In late-January of 2019, students began notifying the Department that they had not received their stipends. Immediately, the Department began reaching out to the DCEH Receiver to remind him of his obligation to pay students their stipends before seeking reimbursement for those payments from the Department. At the time, the Department believed that somewhere between \$7 million and \$13 million were either drawn down or were in the process of being drawn down to reimburse the cost for prepayment of stipends. Through those conversations we learned that the DCEH had not made the stipend payments for which the \$13 million draw down was intended to reimburse the institution. Those funds were spent to cover operating expenses without any basis for the stipend reimbursements to have been drawn down.

*Morelle Question 2 (QFR 2).* Did you or anyone in the Department communicate directly with students between when the Department found out about this crisis and the March 8th closure, to let students know that they couldn't rely on the Department to provide their stipends? If so, please provide copies of these communications and the groups that they were distributed to.

**ANSWER:** The Department spent several weeks trying to identify a mechanism to pay student stipends directly, but it was determined that we lack authority to do so. As a result, the Department decided to cancel all Spring 2019 loans for the affected students. Please see the attached correspondence regarding loan cancellation.

*Morelle Question 3 (QFR 3).* Despite significant pressure from numerous congressional offices, you departed from lessons learned after the Corinthian and ITT closures and refused to communicate directly with students for two months after they had not received their cost of living stipends for the semester. These students counted on you to provide them with cost of living stipends and couldn't afford groceries, rent, diapers, and other essentials. Not only were you unable to provide them stipends, but you didn't even tell them what to expect. How do you justify your lack of action in the face of this crisis?

**ANSWER:** The Department has been actively engaged in this situation, including in the months leading up to the receivership when the Department worked with DCEH and the likely receiver to explain the ramifications of receivership. The Department placed DCEH on HCM2 in January of 2019 after the institution went into receivership, which requires institutions to be reimbursed by the Department after paying student credit balances. As stated above, after the Department learned that DCEH had not paid student

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account balances, the Department acted swiftly to cancel all student loans for that semester.

*During the hearing you said you did not know what letter of credit was on file with Argosy on the day of its closure. Later you revised your answer stating that the correct letter of credit was on file, although you did not know the amount. Despite your conflicting comments, we have entered court filings from the Department into the record that state there was no letter of credit on file with the Department as of November 19, 2019.*

*In order to better understand the situation please:*

*Morelle Question 4.1 (QFR 4a).* Clarify the amount of the letter of credit on file for all Dream Center-owned institutions at the time of their closure.

**ANSWER:** There was no letter of credit on file because the Department had cashed the LOC before it expired in May 2018. After that, the Department retained the proceeds of the LOC. So there was no LOC on file, but instead the Department held cash proceeds from an earlier LOC that was called. Not all DCEH schools have closed, but in March 2019, when most of those schools closed, we had allocated approximately \$28.9 million of the LOC proceeds to DCEH owned schools.

*Morelle Question 4.2 (QFR 4b).* Provide a full accounting of how these funds have been expended or released, what funds remain, and the Department's planned use for those funds.

**ANSWER:** The \$28.9 million allocated to DCEH owned institutions is being held by the Department pending the submission of the final audit of those schools. The receivership and associated HCM2 status rendered most of the schools financially unviable because the schools did not have enough cash on hand to pre-pay stipends. We warned DCEH and the receiver about the hazards of HCM2 well in advance. However, the receiver told us that his job was to clear the debts because a public college in Ohio was going to acquire the institutions. Only after the Ohio community college backed out did the imminent closure of the campuses become imminent.

*Morelle Question 4.3 (QFR 4c).* If a letter of credit was on file as of November 19, 2018, please explain why Department attorneys filed a joint status report stating that Dream Center had no active letters of credit on file.

**ANSWER:** The Department had cashed the DCEH LOC in May 2018 and holds the proceeds of the LOC rather than an LOC.

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

REPRESENTATIVE HARDER

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*Secretary DeVos, you've said repeatedly that you are committed to ensuring that all students have an opportunity to learn free from discrimination. You have also talked about the Office for Civil Rights and its commitment to ensuring nondiscrimination in our nation's schools.*

*Harder Question 1 (QFR 1).* Is there currently a hiring freeze at the Office for Civil Rights?

**ANSWER:** No.

*Secretary DeVos, as you know, last year Congress appropriated a \$16.5 million dollar increase in the Office for Civil Rights' budget to address high caseloads and staff attrition during this administration. At the time, Congress specifically noted that these increases in OCR's budget were intended for new hiring.*

*With Congress' intent in mind, please answer the following:*

*Harder Question 2.1 (QFR 2a).* How many staff have been hired at OCR during the past two fiscal years, with these additional tax dollars?

**ANSWER:** Over the last year, the Department has faced several challenges that have contributed to a delay in hiring new employees—both within OCR and across the Department. These issues have been addressed. For FY 2018 and FY 2019, OCR hired 88 employees; this includes external and internal hiring actions.

*Harder Question 2.2 (QFR 2b).* How many staff have retired or otherwise left OCR during this time?

**ANSWER:** For Fiscal Years 2018 and 2019, 74 employees retired, transferred, or otherwise left OCR.

*Harder Question 2.3 (QFR 2c).* What is your plan to increase the pace of hiring at OCR?

**ANSWER:** The Department's Office of Finance and Operations has hired a contractor that is focused on prioritizing hiring within the Department, and that includes prioritizing OCR's hiring actions. Separately, OCR is taking aggressive steps to ensure that all resources are focused on implementing a hiring initiative. OCR will continue to dedicate resources to ensuring that all hiring goals are met by the end of the fiscal year.

*Harder Question 2.4 (QFR 2d).* Will you remove the hiring freeze at OCR?

**ANSWER:** There is no hiring freeze in effect at OCR.

*Harder Question 2.5 (QFR 2e).* How many staff are in your human resources office that serves OCR?

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

**ANSWER:** OCR is served by an internal (OCR) Human Resources office with three employees. OCR is also supported by the Department of Education’s Human Resources division, which includes ten full-time employees, and eight contractors.

*Harder Question 2.6 (QFR 2f).* How many employees do they serve?

**ANSWER:** OCR’s internal Human Resources team, together with the Department’s broader Human Resources division, serves 511 employees within OCR.

*Harder Question 2.7 (QFR 2g).* Do you plan to increase staffing/resources for the HR office that oversees OCR hiring?

**ANSWER:** Yes, OCR plans to hire one new additional staff to OCR’s Human Resources Team.

*Harder Question 2.8 (QFR 2h).* What other measures have you taken to increase staffing and resources?

**ANSWER:** The Department’s Office of Finance and Operations has hired a contractor that is focused on prioritizing hiring within the Department, including OCR. By June 30, 2019, the Department will have increased the number of staff on its Human Resources team. Separately, OCR is taking aggressive steps to ensure that all appropriate resources are focused on implementing OCR’s hiring initiative.

*Harder Question 2.9 (QFR 2i).* Please provide Congress with an update on your hiring at OCR by the end of the fiscal year.

**ANSWER:** I am happy to provide any updates requested by members of Congress, including updates regarding OCR meeting its hiring goals.

*Secretary DeVos, I am greatly concerned with reports indicating that the percentage of complaints concerning the educational needs of students with disabilities has dropped from 45 percent to 34 percent, a staggering decrease.*

*You often talk about local control and that education decisions are best made by local states and schools;*

*Harder Question 3.1 (QFR 3a).* Are you aware that your staff has created a list of cases that must be reviewed in Washington DC, instead of by the regional, non-political staff who are working the most closely with local schools and colleges, and who are closest to the challenges those schools and colleges face?

**ANSWER:** OCR’s current practice of identifying “Cases for Conversation” (CFC), a process by which Headquarters staff monitors certain cases to ensure quality and consistency in the way cases are resolved across all twelve of OCR’s regional offices. Contrary to the practices of prior administrations, which involved reviewing and

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approving all cases involving certain priority policy areas, OCR's current practice provides more deference and authority to regional staff than previous "call home" processes instituted within OCR. The CFC process does not, in most cases, displace regional review. Rather, it supplements that review.

*Harder Question 3.2 (QFR 3b).* According to these practices that your staff have developed, in several instances, when a case of alleged discrimination such as alleged racial discrimination in school discipline is dismissed or found not to have merit, your Headquarters here in Washington DC does not require it to be reviewed.

**ANSWER:** The informal process used by OCR to monitor "Cases for Conversation" does include a process by which Headquarters staff monitor cases involving certain issues to ensure quality and consistency in the way cases are resolved across all twelve of OCR's regional office. This process, however, does apply to many dismissals. For example, if regional staff flagged a novel legal issue in a school discipline case, Headquarters staff would be available to weigh in on the dismissal and provide information regarding how similar cases involving the same fact patterns and allegations are being resolved across the country. Every case is analyzed on a case-by-case basis, and Headquarters staff, including OCR's Program Legal Group, work with regional staff to ensure that civil rights laws are enforced consistent with statutory and regulatory provisions.

*Harder Question 3.3 (QFR 3b).* But when regional staff recommend a finding of a violation, your staff are requiring review, and sometimes those recommendations by career staff are changed - why is that?

**ANSWER:** As described above, these questions are premised on a misunderstanding of OCR's process.

*Harder Question 3.4 (QFR 3c).* Do you understand that this policy incentivizes staff to not find a violation on such cases?

**ANSWER:** Again, the premise of this question is factually inaccurate, as explained above.

*Secretary DeVos, how many allegations of discrimination in school discipline (K-12) under Title VI, did OCR:*

*Harder Question 4.1 (QFR 4a).* Dismiss;

**ANSWER:** During Fiscal Year 2018, OCR dismissed 226 complaints involving allegations of discrimination in school discipline under Title VI.

*Harder Question 4.2 (QFR 4b).* find no violation (Section 303a of the CPM);

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

**ANSWER:** OCR found no violation, pursuant to Section 303(a) of the Case Processing Manual in 33 complaints in Fiscal Year 2018.

*Harder Question 4.3 (QFR 4c).* or resolve with an agreement under Section 302 or 303b of OCR's Case Processing Manual in FY 16, 17, 18 and 19? (Please provide the total in each area: dismissal, 303a, 302, 303b).

**ANSWER:** Data requested is detailed below. It is important to note that, in FY 2018, OCR resolved 85 Title VI complaints with an agreement under Section 302 of the CPM, compared to 43 such resolutions in FY 2016. Additionally, in FY 2018, OCR resolved 30 Title VI complaints under Section 303(b) of the CPM (after findings of non-compliance), compared to 28 such resolutions in FY 2016.

Closure Type	FY 15	FY 16	FY 17	FY 18
Dismissals	97	100	160	226
Insufficient Evidence	20	9	46	60
302	2	3	4	22
303(b)	0	1	0	0

*Harder Question 4.4 (QFR 4c).* How many open cases that include allegations of discrimination under Title VI in school discipline are currently open?

**ANSWER:** As of May 14, 2019 OCR has 300 open cases that include allegations of discrimination involving school discipline under Title VI.



## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

REPRESENTATIVE MCBATH

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*In January 2019, a federal court appointed a receiver to wind down operations at Argosy University. After reviewing the financial records of the Education Management Corporation (EDMC) sale to Dream Center Education Holdings, LLC (DCEH), the court-appointed Receiver stated in federal court filings that “within sixty days of the closing of DCEH’s purchase of the Universities from EDMC, DCEH discovered that EDMC and its representatives misrepresented key financial factors concerning the Universities. Despite DCEH’s best efforts, the Universities were, on the whole, failing without hope for redemption.”*

*McBath Question 1.1 (QFR 1a).* Secretary DeVos, when did the Department of Education first have concerns about the financial viability of any EDMC or DCEH-owned institutions?

**ANSWER:** The Department monitors the financial stability of all non-profit and proprietary institutions. The Department requires institutions to post a letter of credit (LOC) with the Department if the financial health of the institution is in question. DCEH had an active LOC on file with the Department from its transaction with EDMC. The LOC was set to expire in May of 2018, so the Department required DCEH to post a new LOC of \$92 million. When DCEH failed to do so, the Department reached out to DCEH to determine if larger financial challenges existed. In June of 2018, DCEH informed the Department that it planned to close many of its existing institutions.

*McBath Question 1.2 (QFR 1a).* Please detail how the Department came by this information.

**ANSWER:** Please see the response above that outlines when the Department became aware of DCEH’s financial challenges.

*McBath Question 1.3 (QFR 1b).* Secretary DeVos, do you believe if students had known that these schools were “failing without hope for redemption” that they would have enrolled?

**ANSWER:** Students are always served best when they have options, including the option to complete their program or transfer to a new institution. The Department worked closely with states and accreditors to avoid a precipitous closure at DCEH institutions. Unfortunately, as a result of the administrative capability and financial responsibility concerns arising from the DCEH institutions’ failure to pay the students stipends, the Department decided to revoke title IV eligibility from DCEH institutions to protect taxpayers and prevent future harm to students.

*Dream Center Education Holdings, LLC purchased South University, Argosy University, and the Art Institutes from the Education Management Corporation in October 2017. Students who enrolled at these universities were under the assumption that the Department of Education was sufficiently monitoring the finances of Dream Center Education Holdings, LLC. The Department of Education should help these students who were affected by the closures.*

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

*McBath Question 2.1 (QFR 2a).* Secretary DeVos, will the Department of Education extend the closed school discharge window back to October 2017?

**ANSWER:** The Secretary has extended the closed school discharge window look back to June 29, 2018 for students who were enrolled in one of the teach-out campuses. Because we understand that some students may have received notification of the pending closure as early as June 29, 2018, we have established that as the date to be used for the extended look-back period. Please see the Department's announcement at: <https://studentaid.gov/announcements-events/dceh-schools>. South University and many Art Institutes continue to operate, making their students ineligible for closed school loan discharge.

*McBath Question 2.2 (QFR 2b).* Secretary DeVos, if the Department will not extend the closed school discharge window to October 2017, will the Department extend the window at all?

**ANSWER:** Please see the response above.

*McBath Question 2.3 (QFR 2b).* What factors will the Department consider in making this determination?

**ANSWER:** 34 C.F.R. § 685.214(c)(1)(i)(B) allows the Department to extend the 120-day period if it is determined by the Department that exceptional circumstances related to a school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; the school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law. In particular, we are reviewing the accreditation status of the Art Institute of Colorado and Illinois Institute of Art to determine the effective date of the look back period, but until that investigation is completed, we have extended the look-back period to June 29, 2018.

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

REPRESENTATIVE LEE

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*Secretary DeVos, the 2016 Borrower Defense to Repayment Rule was promulgated to assist students in achieving a timely discharge of their loans. In order to ensure that tax payer dollars are adequately protected, Borrower Defense the regulations also require institutions to report to the Department the occurrence of specified automatic and discretionary triggering events which allow and require the Department to better predict and respond to institutions' financial distress. An October 2018 court order required the Department of Education to enforce the Borrower Defense to Repayment Rule.*

*Lee Question 1.1 (QFR 1a).* In complying with the October 2018 court order, have you provided guidance to institutions to ensure that these institutions are reporting these triggering events?

**ANSWER:** On March 15, 2019, the Department published an Electronic Announcement (EA) that provides information for institutions about how to report financial triggering events codified in the 2016 Borrower Defense to Repayment Final Rule. Prior to issuing that guidance, on Dec. 13, 2018, the Department published an EA that announced the implementation of and process for the automatic closed school loan discharges codified in 34 CFR 685.214(c) (Direct Loan Program), 34 CFR 682.402(d)(8)(ii) (FFEL Program), and 34 CFR 674.33(g)(ii) (Perkins Loan Program).

Additionally, the borrower defense regulations added new closed school loan disclosure requirements for loan holders, guaranty agencies, and schools. These provisions also were communicated as part of the Dec. 13, 2018, guidance to the financial aid community.

Finally, on May 20, 2019, the Department issued an EA to reiterate that while the Department continues to receive and address institutional inquiries related most specifically to the reporting requirements in the financial responsibility regulations, the Department expects all disclosures to be submitted as described in the 2016 regulations.

The Department published a final 2018 Borrower Defense to Repayment Final Rule on August 30, 2019. This final rule allows institutions to voluntarily implement the Financial Responsibility provisions of the new regulation immediately, which negates the triggers in the 2016 regulation and introduces a new set of triggers.

*Lee Question 1.2 (QFR 1a).* If so, please include a copy of the guidance and a list of institutions that the Department sent it to.

**ANSWER:** An electronic version of the [December 2018 Electronic Announcement](https://ifap.ed.gov/eannouncements/121318ClosedSchoolDischargeChanges.html) can be found at [ifap.ed.gov/eannouncements/121318ClosedSchoolDischargeChanges.html](https://ifap.ed.gov/eannouncements/121318ClosedSchoolDischargeChanges.html).

An electronic version of the [March 2019 Electronic Announcement](https://ifap.ed.gov/eannouncements/030719GuidConcernProv2016BorrowerDefensetoRypmtReqs.html) can be found at [ifap.ed.gov/eannouncements/030719GuidConcernProv2016BorrowerDefensetoRypmtReqs.html](https://ifap.ed.gov/eannouncements/030719GuidConcernProv2016BorrowerDefensetoRypmtReqs.html).

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An electronic version of the [March 2019 Electronic Announcement](https://ifap.ed.gov/eannouncements/052019QuestionFinancialResponProvision2016BorrowDefenseRegulate.html) can be found at [ifap.ed.gov/eannouncements/052019QuestionFinancialResponProvision2016BorrowDefenseRegulate.html](https://ifap.ed.gov/eannouncements/052019QuestionFinancialResponProvision2016BorrowDefenseRegulate.html).

FSA issued the three announcements electronically to all institutional and financial partners through the Information for Financial Aid Professionals (IFAP) portal. FSA developed the IFAP portal to provide school and financial partners with electronic access to the many FSA publications that guide the administration of the Title IV Student Financial Assistance programs.

*Lee Question 1.3 (QFR 1b).* Please provide the name of all institutions that have provided information to the Department of Education to date.

**ANSWER:** On March 15, 2019, FSA announced by an electronic announcement that institutions had 60 days to comply with the disclosure requirements codified in the 2016 Final Rule. By May 14, 2019, the Department received 142 submissions from institutions. The 142 submissions are required notifications under the financial responsibility events, actions, and condition requirements related to

- debts, liabilities, and losses (34 CFR 668.171(c)),
- non-Title IV revenue (34 CFR 668.171(d)),
- publicly traded institutions (34 CFR 668.171(e)), and
- discretionary factor or events (34 CFR 668.171(g)).

The attached spreadsheet includes names and associated OPEIDs of the institutions that have provided disclosures to the Department through May 14, 2019.



FSA Lee 1.3.xlsx

The Department published a final 2018 Borrower Defense to Repayment Final Rule on August 30, 2019. This final rule allows institutions to voluntarily implement the Financial Responsibility provisions of the new regulation immediately, which negates the triggers in the 2016 regulation and introduces a new set of triggers.

*Lee Question 1.4 (QFR 1c).* Please provide a list of all discretionary or automatic actions that have been taken under the 2016 Borrower Defense Rule, such as the requirement of financial surety, public disclosure of information to current and prospective students, or re-calculation of a school's composite score.

**ANSWER:** The Department has issued one compliance action to date tied specifically to provisions of the 2016 Final Rule. In a letter dated March 11, 2019, the Department informed National American University (NAU) that it determined that while NAU's fiscal year ending (FYE) 2018 financial composite score fell within the zone scoring parameters, NAU failed to meet other components of the financial responsibility standards.

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

In accordance with the revised regulatory standards governing publicly traded institutions (34 C.F.R. § 668.171(e)(1), (2) & (3)), a publicly traded institution is not able to meet its financial or administrative obligations if the institution is subject to a Security Exchange Commission (SEC) action or failed to comply with reporting requirements of the SEC; or if the exchange on which the institution's stock is traded notifies the institution that it is not in compliance with exchange requirements; or if the institution's stock is delisted. NAU had a "Going Concern" in its FYE18 audit submission, and it failed to comply with the reporting requirements of the SEC. Additionally, the NASDAQ stock exchange notified the institution that it was not in compliance with exchange requirements.

As a result, the Department's correspondence informed NAU that it must submit a letter of credit and operate under the Heightened Cash Management 1 payment method, as well as be provisionally certified to participate in the federal student aid programs for a period of up to three complete award years. In May 2019, the Department received a letter of credit from NAU.

## EDUCATION AND LABOR HEARING (4.10.19) -- QUESTIONS FOR THE RECORD

REPRESENTATIVE TRAHAN

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*Trahan Question 1 (QFR 1).* SECRETARY DEVOS, please provide a description of data collected by the Student Aid Enforcement Unit or the Department more broadly, that the Department relies upon to identify schools at risk of failure.

**ANSWER:** The Department does not comment on deliberative, preliminary, or ongoing investigative work, including information used to identify schools at risk of failure.

*Trahan Question 2.1 (QFR 2).* SECRETARY DEVOS, has the Enforcement Unit investigated allegations of misrepresentations or other illegal activity by institutions of higher education since you became Secretary?

**ANSWER:** The Enforcement Office continues to investigate potential misconduct at institutions of higher education, as well as whether schools are properly administering the federal student aid programs. We continue to pursue various penalties, including terminations and revocations, when evidence supports those actions.

*Trahan Question 2.2 (QFR 2).* If so, please provide a list of closed investigations and brief description of the allegations and outcome.

**ANSWER:** Please see attachment "Trahan Q 2" detailing Enforcement Office actions from January 2017 to April 2019.



FSA Trahan 2.2.pdf

*SECRETARY DEVOS, the Enforcement Unit's first supervisor during your tenure, Julian Schmoke, previously was the dean of a for-profit college – DeVry University – which paid more than \$100 million to settle a lawsuit involving claims of false advertising and misleading practices. We understand that Dr. Schmoke was removed from his position as head of the Enforcement Unit but is now under consideration for a different position in the Department.*

*Trahan Question 3.1 (QFR 3a).* Why was Dr. Schmoke removed as the head of the Enforcement Unit?

**ANSWER:** Following the departure of the Enforcement Office's Clery Group director in January 2019, Dr. Schmoke assumed the position to ensure a continued focus on campus crime and security issues. This is particularly important given the significance of the Clery Group's ongoing case work. Jeff Appel had been delegated the duties of the chief enforcement officer. Sadly, Jeff Appel passed away in November 2019. Robin Minor is the current chief enforcement officer.

*Trahan Question 3.2 (QFR 3b).* What duties has he been fulfilling since his removal?

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

**ANSWER:** Since January 2019, Dr. Schmoke has served as the director of the Clery Group and is also a Senior Advisor to the Chief Operating Office of Federal Student Aid.

*Trahan Question 3.3 (QFR 3c).* As of the date of your response, what is his position title and responsibilities?

**ANSWER:** Dr. Schmoke currently serves as the director of the Clery Group and a Senior Advisor to the Chief Operating Officer of Federal Student Aid.

*SECRETARY DEVOS, during your first year as Secretary the Department had an operational data-sharing memorandum of understanding (MOU) between the Department and Social Security Administration (SSA), necessary to implement the Gainful Employment regulations. However, records requests from the Department to SSA dropped by 99.6% from 1,305,967 to 61,000 in your first year. It appears you were pre-emptively not implementing the Gainful Employment regulations.*

*Trahan Question 4.1 (QFR 4a).* Please describe how you were implementing the Gainful Employment regulations without this data.

**ANSWER:** Prior to 2017, the information sent to SSA under the MOU was dependent upon building lists of students who completed GE programs each year. The process of implementing the GE regulations to notify institutions of the first-year GE program outcomes delayed the preparation of the second year GE completer lists, as did the burden of administering the alternative earnings appeals including as a result of litigation that required the Department to reopen the alternative earnings appeals process. The Memorandum of Understanding expired before the Department submitted the second year GE program completer lists. On July 1, 2019, the Department of Education published a final rule rescinding the Department's gainful employment (GE) regulations (2014 Rule) in the Federal Register.

*Trahan Question 4.2 (QFR 4b).* Why did the Department only make .4% the requests in your first year as compared to the last year of the Obama administration?

**ANSWER:** The 61,000 records requested of SSA were related to implementation of the Department's borrower defense partial relief methodology, not the Gainful Employment regulations.

Under 34 CFR 668.404(e), the Department is required to calculate the annual earnings of students who completed a program that is subject to the Gainful Employment regulations using earnings information obtained from the Social Security Administration (SSA), pursuant to the process in 34 CFR 668.405 and described below.

First, for each award year, using information reported by the institution under 34 CFR 668.411, we created a draft completers list of students who received Title IV aid and completed GE programs during the cohort period, including an indication of whether a student will be excluded under 34 CFR 668.404(e), and submits the list to the institution

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

for its review. The institution may make corrections to the information on the list. It may also challenge the exclusion or inclusion of students. Upon review of any corrections, we provide the institution with a final completers list that will be submitted to SSA.

SSA calculates and returns to the Department the mean and median annual earnings of students for whom it was able to match earnings data for the GE “earnings year,” which is two calendar years preceding the year in which the D/E rates are calculated. For example, for the D/E rates calculated in 2016 for the 2014-2015 award year, the earnings year was calendar year 2014. Under 34 CFR 668.404(c)(2), in calculating a program’s D/E rates, we use the higher of the SSA-reported mean or median earnings. SSA does not provide the Department any individual earnings data or the identity of any students who were or were not matched because it is prohibited by law from doing so.

The Memorandum of Understanding (MOU) between the Department and SSA expired in May of 2018, before the Department had sent the completers list for the second year of GE data to SSA. The Department was delayed in sending the completers list to SSA for the second year of GE earnings data because of the additional time associated with notifying institutions of the first-year GE program outcomes, which delayed efforts to work on the second-year list. In addition, there were unexpected challenges associated with administering the alternative earnings appeals allowed under the regulation. There was also litigation that added complexity and burden to evaluating alternative earnings appeals.

In 2016, during the last year of the Obama Administration, the Department sent SSA the completers list for GE programs, which explains why the volume of records requests sent from the Department to SSA during that year was higher than it was in 2017 when a completers list was not provided.

*Trahan Question 5 (QFR 5).* SECRETARY DEVOS, you have used a SSA legal decision to justify not implementing the Gainful Employment rule, stating that it would be unlawful for SSA to share this data with the Department. Please transmit that legal opinion.

**ANSWER:** The Department does not have and is not aware of an SSA legal decision regarding SSA’s sharing of data with the Department. The Department’s implementation of certain parts of the Gainful Employment regulations is dependent on earning information provided by SSA to the Department under the terms of the Memorandum of Understanding (MOU). The MOU had an expiration date of May 24, 2018. We asked SSA to extend the MOU, but SSA did not approve the request.

*SECRETARY DEVOS, reportedly, the Department used the data collected under the Gainful Employment MOU with SSA to attempt to give partial relief to defrauded borrowers under Borrower Defense.*



## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

*Trahan Question 6.1 (QFR 6a).* Did the Department use information collected under the Gainful Employment MOU for any purpose other than enforcement of the Gainful Employment rule?

**ANSWER:** Yes. The Department used aggregate earnings program data for the Corinthian schools that we received from SSA under the MOU as part of the formula for determining the amount of relief a borrower with an approved borrower defense claim would receive. The Department will continue to use SSA earnings data for some institutions under our new methodology for determining financial harm and awarding relief. Since the SSA earnings data are already publicly available, no additional data from SSA is required.

*Trahan Question 6.2 (QFR 6a).* If so please detail that use, specifically include any information about the Department's use of this data for Borrower Defense purposes.

**ANSWER:** As noted above, the Department used aggregate earnings of groups of BD applicants based on submitting social security numbers of those groups to SSA and receiving aggregate earnings data for those groups. These BD applicant earnings were then used as part of the formula for determining the amount of relief a borrower with an approved borrower defense claim would receive.

*Trahan Question 6.3 (QFR 6b).* Was this a reason that the MOU was suspended?

**ANSWER:** The MOU between the Department and SSA was not suspended. The MOU included a termination date that could be extended by the agreement of the parties. We asked SSA to extend the agreement, but SSA did not approve the request.

*Trahan Question 6.4 (QFR 6c).* Was the use of the Gainful Employment data to calculate partial relief outside of the scope of the MOU?

**ANSWER:** The Department believes its use of the aggregate earnings data from SSA in determining the amount of relief for successful borrower defense claimants was consistent with the MOU.

*Trahan Question 7.1 (QFR 7).* How many Corinthian borrowers have received closed school discharges based on individual applications submitted to the Department?

**ANSWER:** As of June 11, 2019, almost 9,300 Corinthian borrowers have received closed school discharges based on individual applications submitted to the Department.

*Trahan Question 7.2 (QFR 7).* What is the total value of those discharges?

**ANSWER:** The total value of the discharges is \$102 million.

## EDUCATION AND LABOR HEARING (4.10.19) -- QUESTIONS FOR THE RECORD

*Trahan Question 8.1 (QFR 8).* How many Corinthian borrowers have received automatic closed school discharges under the recently implemented automatic closed school discharge provision of the 2016 Borrower Defense rule?

**ANSWER:** As of June 11, 2019, approximately 7,900 Corinthian borrowers have received automatic closed school discharges under the recently implemented automatic closed school discharge provision of the 2016 Borrower Defense rule.

*Trahan Question 8.2 (QFR 8).* What is the total value of those discharges?

**ANSWER:** The total value of the discharges is \$117 million.

*Trahan Question 9.1 (QFR 9).* How many ITT borrowers have received closed school discharges based on individual applications submitted to the Department?

**ANSWER:** As of June 11, 2019, almost 18,000 ITT borrowers have received closed school discharges based on individual applications submitted to the Department. Additionally, beginning September 17, 2019 the Department began sending pre-notification emails to student borrowers about automatic discharge of some or all of their loans for individuals who attended an ITT location that closed on Sept. 6, 2016 under the recently implemented automatic closed school discharge provision of the 2016 Borrower Defense rule.

*Trahan Question 9.2 (QFR 9).* What is the total value of those discharges?

**ANSWER:** The total value of the discharges is approximately \$241 million. The value of the 7,500 pre-notification email student borrower loans noted above is an additional \$94.5 million.

*Trahan Question 10.1 (QFR 10).* How many students who attended Dream Center-owned Argosy University have applied for closed school discharges?

**ANSWER:** As of June 19, 2019, Approximately 2,400 students who attended Dream Center-owned Argosy University have applied for closed school discharges.

*Trahan Question 10.2 (QFR 10).* Of those, how many have received closed school discharges and what is the total value of those discharges?

**ANSWER:** Approximately 900 borrowers have received closed school discharges with a total discharge amount of \$26 million.

*Trahan Question 11.1 (QFR 11).* How many students who attended the Dream Center-owned Art Institute schools have applied for closed school discharges?

**ANSWER:** As of June 19, 2019, approximately 1,400 students who attended the Dream Center-owned Art Institute schools have applied for closed school discharges.

## EDUCATION AND LABOR HEARING (4.10.19) -- QUESTIONS FOR THE RECORD

*Trahan Question 11.2 (QFR 11).* Of those, how many have received closed school discharges and what is the total value of those discharges?

**ANSWER:** As of June 19, 2019, more than 500 borrowers have received closed school discharges with a total discharge amount of approximately \$12 million.

*Trahan Question 12.1 (QFR 12).* Will the Department use its authority pursuant to 34 CFR 685.214(c) to extend the closed school discharge period for students who attended schools owned by Dream Center Educational Holdings and the Dream Center Foundation?

**ANSWER:** Yes. The Secretary has determined, under authority provided in 34 C.F.R. § 685.214(c)(1)(i)(B), that due to exceptional circumstances, the closed school loan discharge lookback window for students who had been enrolled at one of the DCEH December teach-out institutions will be extended to June 29, 2018, which is the first date on which students may have received notification that the school was entering into a teach-out. Pending the results of an investigation of the accreditation status, the Department could make a determination to further extend the look-back period. The Secretary has determined that circumstances do not exist to warrant an extended look-back period for students who were enrolled at Argosy University because the Receivership took place within 120 days of the closure.

*Trahan Question 12.2 (QFR 12).* If so, until what date will the Department extend the closed school discharge period back?

**ANSWER:** Please see the response above.

*Trahan Question 13.1 (QFR 13).* Will the Department use its authority pursuant to 34 CFR 685.214(c) to extend the closed school discharge period for students who attended schools owned by Education Corporation of America?

**ANSWER:** The Secretary has determined that exceptional circumstances, as defined in 34 C.F.R. § 685.214(c)(1)(i)(B) do not exist. Therefore, the date of the closure of the institutions will determine the closed school loan discharge look-back period.

*Trahan Question 13.2 (QFR 13).* If so, until what date will the Department extend the closed school discharge period back?

**ANSWER:** Please see the response above.

*In April 2016, ED conducted a matching program with SSA to identify disabled federal student loan borrowers eligible for Total Permanent Disability (TPD) discharges. The matching program identified approximately 387,000 student loan borrowers eligible for a streamlined TPD process.*

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

*Trahan Question 14.1 (QFR 14).* Of the 387,000 borrowers, how many have submitted TPD applications?

**ANSWER:** As of May 10, 2019, of the 387,000 borrowers identified in the April 2016 match, more than 137,000 borrowers have returned Pre-Qualified SSA applications.

*Trahan Question 14.2 (QFR 14).* Of the 387,000 borrowers, how many have received TPD discharges?

**ANSWER:** As of May 10, 2019, of the 387,000 borrowers identified in the April 2016 match, approximately 131,000 borrowers received approval for discharge.

*Trahan Question 14.3 (QFR 14).* Of the 387,000 borrowers, how many are currently in default on their student loans?

**ANSWER:** As of June 19, 2019, approximately 90,000 of these borrowers are currently in default

*Trahan Question 14.4 (QFR 14).* Of the 387,000 borrowers, how many have been certified for Treasury Offset (TOP)?

**ANSWER:** FSA stops federal offset collections once a borrower is matched during the SSA matching process.

*Trahan Question 14.5 (QFR 14).* Of the 387,000 borrowers, how many have had their federal tax refunds offset?

**ANSWER:** FSA stops federal offset collections once a borrower is matched during the SSA matching process. If the borrower was already subject to federal offset, the funds are returned if the disability date is before the date of offset and the loans are discharged

*Trahan Question 14.6 (QFR 14).* What is the total value of those offsets?

**ANSWER:** No funds are collected through federal offset after the match, and any collections in process are returned if the disability date is before the date of offset and the loans are discharged.

*Trahan Question 14.7 (QFR 14).* Of the 387,000 borrowers, how many have had their Social Security benefits offset?

**ANSWER:** FSA stops federal offset collections once a borrower is matched during the SSA matching process. If the borrower was already subject to federal offset, the funds are returned if the disability date is before the date of offset and the loans are discharged.

*Trahan Question 14.8 (QFR 14).* What is the total value of those offsets?

## EDUCATION AND LABOR HEARING (4.10.19) -- QUESTIONS FOR THE RECORD

**ANSWER:** No funds are collected through federal offset after the match, and any collections in process are returned if the disability date is before the date of offset and the loans are discharged.

*In April 2018, ED conducted a matching program with the VA to identify disabled veterans eligible for TPD discharges. The matching program identified 42,763 disabled veteran borrowers eligible for a streamlined TPD process.*

*Trahan Question 15.1 (QFR 15).* Of the 42,763 borrowers, how many have submitted TPD applications?

**ANSWER:** As of May 10, 2019, of the borrowers identified in the April 2018 match, more than 16,000 borrowers have returned Pre-Qualified Veterans Affairs (PQVA) applications.

*Trahan Question 15.2 (QFR 15).* Of the 42,763 borrowers, how many have received TPD discharges?

**ANSWER:** As of May 10, 2019 of the borrowers identified in the April 2018 match, almost 17,000 have received approval for discharge. Note: The number of borrowers approved for discharge is higher than the number who submitted applications as a result of a process change. If an identified borrower had previously submitted a traditional discharge application that was in a "pending" status, the servicer converted the borrower's existing application into the PQVA process and processed as a VA discharge.

*Trahan Question 15.3 (QFR 15).* Of the 42,763 borrowers, how many are currently in default on their student loans?

**ANSWER:** As of June 19, 2019, approximately 9,000 of these borrowers are currently in default.

*Trahan Question 15.4 (QFR 15).* Of the 42,763 borrowers, how many have been certified for Treasury Offset (TOP)?

**ANSWER:** FSA stops federal offset collections once a borrower is matched during the VA matching process.

*Trahan Question 15.5 (QFR 15).* Of the 42,763 borrowers, how many have had their federal tax refunds offset?

**ANSWER:** FSA stops federal offset collections once a borrower is matched during the VA matching process. If the borrower was already subject to federal offset, the funds are returned if the disability date is before the date of offset and the loans are discharged.

*Trahan Question 15.6 (QFR 15).* What is the total value of those offsets?

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**ANSWER:** No funds are collected through federal offset after the match, and any collections in process are returned if the disability date is before the date of offset and the loans are discharged.

*Trahan Question 15.7 (QFR 15).* Of the 42,763 borrowers, how many have had their Social Security benefits offset?

**ANSWER:** FSA stops federal offset collections once a borrower is matched during this process. If the borrower was already subject to federal offset, the funds would be returned if the disability date is before the date of offset and the loans are discharged.

*Trahan Question 15.8 (QFR 15).* What is the total value of those offsets?

**ANSWER:** No funds are collected through federal offset after the match, and any collections in process are returned if the disability date is before the date of offset and the loans are discharged.

**FOR-PROFIT CLOSURE CREDIT BALANCE REFUNDS**

According to the FSA website, the Department has “begun the process” of cancelling student loans for Argosy and Art Institute students that did not receive the credit balance refunds owed to them.

*Trahan Question 16.1 (QFR 16).* How many total Argosy and Art Institute borrowers did not receive their credit balance refunds?

**ANSWER:** The Department does not have full insight into the credit balance refund process because it occurs at the school level; credit balance refunds could involve financial aid other than federal student aid funds. However, since the Department could not identify which students did not receive a credit balance for which they were due, the Department cancelled all loans that were—or were scheduled to be—disbursed for the spring 2019 term. The Department identified and notified approximately 4,000 Argosy University (Argosy) and Art Institute (Ai) students that their federal Direct Loan disbursements were—or would be—cancelled for terms that started in January 2019 or later. The students were informed that they are no longer responsible for repaying these cancelled loans.

In early February 2019, the Department has requested from the receiver a complete listing of the Argosy and Ai students that were owed a credit balance refund. The receiver has submitted various lists, but the Department has not been able to determine the accuracy of the information submitted by the receiver. The receiver has represented to the court that his office is engaged in a forensic examination to determine how many students were impacted and how the failure to pay stipends occurred.

*Trahan Question 16.2 (QFR 16).* Of those, how many have not received automatic discharges to date?

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

**ANSWER:** The Department cancelled the federal Direct Loan disbursements for terms that started in January 2019 or later for all identified students.

*Trahan Question 16.3 (QFR 16).* What is the total value of the credit balance refunds that students did not receive?

**ANSWER:** As noted in Trahan Question 16.1 above, the Department does not have information about the value of the credit balance refunds that students did not receive. The Department cancelled approximately \$30 million in Direct Loan disbursements for Argosy and Ai students. Please note that the referenced cancelled disbursements are for a specific term and do not represent all loans potentially eligible for closed school discharge. The total loan amount above is specific to the cancelled disbursements.

*Trahan Question 17 (QFR 17).* How many students were receiving federal student loans for attendance at the Illinois Institute of Art (including the Chicago, IL Schaumburg, IL and Novi, MI campuses) from January 20, 2018 until the date the school closed?

**ANSWER:** From Jan. 20, 2018, until the locations' closures on Dec. 14, 2018, a total of 1,153 students received federal student loans. The number of borrowers per campus is provided below:

School Name	OPEID	Students
Illinois Institute of Art (The)	01258400	528
Illinois Institute of Art (The) - The IL Institute of Art - Schaumburg	01258401	223
Illinois Institute of Art (The) - The Art Institute of Michigan	01258405	402

*Trahan Question 18 (QFR 18).* How many students were receiving federal student loans for attendance at the Art Institute of Colorado from January 20, 2018 until the date the school closed?

**ANSWER:** From Jan. 20, 2018, until the Art Institute of Colorado's closure on Dec. 14, 2018, a total of 334 students received federal student loans.

*Trahan Question 19 (QFR 19).* Will the Department provide group student loan discharges for former students of the Illinois Institute of Art and Art Institute of Colorado who did not receive accurate information about the accreditation status of their schools on or after January 20, 2018?

**ANSWER:** The Department is continuing its review of this matter. As we have explained several times, the Department believes that the institutions were not in an unaccredited status between January 2018 and December 2018, which would result from a withdrawal or termination of accreditation. Not only do HLCs policies indicate that the schools remained in a recognized status throughout this period, even as late as November 2018 HLC described its 2017 decision as an "extension of accreditation." HLC has described CCC status inconsistently in its correspondence with the Department. In some instances HLC refers to the status of the two schools as a preaccredited status, whereas in other places it refers to CCC status as a

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

“recognized” status, while other times it describes a final affirmative decision as a “reinstatement” of accreditation, and most recently as an “extension of accreditation.” None of those terms indicate that HLC took an adverse action against the school or withdrew accreditation, which HLC would have been required to report to the Department within a given period of time. HLC knew that students at these schools continued to receive title IV, which would not be allowed for a school in a non-accredited status, yet HLC never raised a concern about this with the Department.

We believe this situation was confusing to all involved, but the source of the confusion was HLC’s failure to follow its written standards and the Department’s regulations. The failure of the schools rests solely upon DCEH leaders. However, the confusion regarding the accreditation status of the schools rests solely on the actions HLC took and the inconsistent language they used in describing what CCC status was.



## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

REPRESENTATIVE CASTRO

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*Secretary DeVos, Under your leadership, the Education Department has repeatedly proposed expanding Federal Pell Grants to short-term job training programs without increased oversight to ensure program quality. In fact, when you came before my colleagues on the Appropriations Committee a few weeks ago, you indicated that this expansion would not pose any additional costs. You stated that “there would be a great many Pell Grant-eligible students who would opt to take a shorter-term program in lieu of the traditional route, and we would see a tradeoff of funds from the long-term Pell Grant programs to the short-term programs.” Not only does this statement contradict your own budget documents, but there are some deeply problematic narratives underlying this argument. Low-income students and students of color are already disproportionately concentrated in shorter-term degree and certificate programs. The vast majority of Pell recipients are from lower income families, and almost 50% of Hispanic undergraduates and nearly 60% of Black undergraduates rely on Pell Grants to attend school. These are students that have chosen a college education, and we should not be pushing them to forgo degrees and opt for shorter-term, workforce-focused programs.*

*Castro Question 1 (QFR 1).* Why do you think that Pell recipients would be better off forgoing a college degree program?

**ANSWER:** Every student is different and one-size-fits-all solutions in higher education have been proven not to work. Students, not the Department, are in the best position to make their own decisions regarding their educational pursuits. That’s why the Department has proposed to expand options for students by allowing them to use Pell Grants on programs that best fit their needs. We know that many students are currently pursuing high-quality, short-term programs that lead to a credential, certification, or license in a high-demand field even though they are not able to access Pell Grants. This proposal would give those students the chance to use Pell Grants to finance their education. Students would continue to have the choice to pursue a traditional college degree under our proposal.

*Secretary DeVos, while we need to ensure that higher education meets the needs of adult students and sets up students for success in the workforce, I have a hard time believing that a massive expansion of short-term programs without oversight accomplishes those goals. Quality, stackable short-term programs can provide both immediate and long-term benefits. However, currently, the education market is flooded with high-cost, low-quality short-term programs operated by for-profit colleges. The Brookings Institute found that earnings gains for students who attended certificate programs at for-profit colleges “cannot be shown to be different from zero and are, at most, about \$365 per year.” This left the average for-profit certificate student with a loss of about \$1200 over their lifetime. While your budget recommends limiting the expansion of Pell Grants to “high-quality” short-term programs, there is no specificity for how you would ensure “high-quality” is ensured for every program.*

*Castro Question 2 (QFR 2).* Can you commit to supporting the exclusion of the for-profit sector from any potential Pell expansion?

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**ANSWER:** The proposed expansion to high-quality short-term programs reflects the Administration's principle that Federal laws and regulations should be updated to facilitate, not impede, students from acquiring the skills needed in today's workforce. In the same vein, the Department will work to ensure that students have the access and information to choose the institution and short-term program that the student seeks. The Department stands ready to work with Congress to craft specific parameters and qualifications to better define "high-quality" short-term programs and what a potential Pell expansion would look like.

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

REPRESENTATIVE THOMPSON

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*Thompson Question 1 (QFR1).* Secretary DeVos, as you are aware, Part A of Title I in the Every Student Succeeds Act (ESSA) provides funding to local educational agencies through four separate formulas.

ESSA also directed the Director of the Institute of Education Sciences to complete a study on the effectiveness of these four existing Title I formulas to deliver funds to the most economically disadvantaged communities.

I wanted to take a second to say I appreciate the Department's follow through on this study and look forward to the findings of this study in May. It is my firm belief that all children are equal under the law and the federal investment in their futures should not be determined by their zip code.

**ANSWER:** On May 8, the Department's National Center for Education Statistics (NCES) released a report entitled "Study of the Title I, Part A Grant Program Mathematical Formulas." This study responds to a Congressional mandate under section 9211 of the Every Student Succeeds Act (ESSA) to examine the distribution of Title I funds to understand how the current formulas affect various types of districts, such as large or small districts, those in poor or rich areas, and those in urban or rural areas. The Act directed the Institute of Education Sciences (IES) to respond to nine specific analytic tasks in a report. These analytic tasks specifically called for comparisons of districts across the 12 NCES geographic locales, ranging from large cities to remote rural areas. We were pleased to provide your staff with a briefing on this study.

The final study may be accessed through his link: <https://nces.ed.gov/pubs2019/title1/index.asp>.

*Thompson Question 2 (QFR 2).* As you know, there are more than 7 million open jobs across the country. These jobs are left vacant because individuals do not have the skills necessary to fill them.

As Co-Chair of the Career and Technical Education Caucus and a Member of this Committee, I have always strongly supported CTE programs that provide learners of all ages with career-ready skills.

Fortunately, during the 115th Congress, we were able to enact the Strengthening Career and Technical Education for the 21st Century Act which restores rungs on the ladder of opportunity for all Americans to be successful in the workforce.

This legislation, which was signed into law by President Trump in July 2018, is the first major overhaul to the Carl D. Perkins Career and Technical Education Act since 2006.

This legislation aims to close the skills gap by modernizing the federal investment in CTE programs and connecting educators with industry stakeholders.

I was happy to see that Career and Technical Education received full funding under the

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

Administration's proposed FY2020 Budget.

Madam Secretary, the reauthorization of Perkins included a provision that replaced the local plan required from CTE providers with a comprehensive needs assessment meant to align the CTE programs being offered with local workforce needs.

During this transition year and beyond, how do you plan to further ensure that our students are provided with the skills they need to not just fill open jobs, but have successful careers?

**ANSWER:** The U.S. Department of Education is actively encouraging States to leverage the opportunities provided by the enactment of the *Strengthening Career and Technical Education for the 21st Century Act (Perkins V)* to improve career and technical education (CTE) programs, promote innovation, and better prepare young people and adults for careers. On December 14, 2018, the Department held a "Rethink Career and Technical Education Summit" that brought together business and industry representatives, professional associations, and educators to identify specific ways in which the opportunities provided by the new law can be used to challenge the status quo, set more students on a meaningful career path, and address the expanding skills gap for U.S. employers. The summit helped to launch a year-long effort by the Office of Career, Technical, and Adult Education (OCTAE) to highlight for states ways in which they may want to "rethink CTE" and innovate to improve CTE programs. For example, the reserve fund authorized by section 112(c) of *Perkins V* is an important lever of opportunity that can be used to seed and support innovation. OCTAE will be sharing with states promising strategies that some states have used to take advantage of this opportunity.

We also are investing funds appropriated for national activities authorized by section 114 of *Perkins V* to promote change and innovation. On April 15, 2019, the Department published a notice inviting applications for \$2.8 million in grants for projects that will identify, support, and evaluate evidence-based and innovative strategies to improve and modernize CTE. We are excited by this opportunity to support creative, field-initiated solutions to some of the persistent challenges in CTE and hope to provide greater support for CTE Innovation and Modernization grants in FY 2020. The President has requested \$13 million in FY 2020 to support an expanded Innovation and Modernization grants program focusing on science, technology, engineering, and mathematics fields, including computer science. To help community and technical colleges better meet the needs of working adults who want to learn new skills, we also are making available a technical assistance tool kit that offers suggestions on how to redesign associate degree programs as progressive sequences of "stackable credentials" valued by employers. Stackable credentials are a practical way of helping students progress along the education continuum while earning credentials that give them a boost in the job market, enabling them to earn as they learn. Consistent with the President's May 2, 2019 Executive Order on America's Cybersecurity Workforce, the Department intends to support an initiative to expand professional development to cadres of high school CTE teachers to prepare them to teach cybersecurity programs of study that begin in high school and continue at community and technical colleges with cybersecurity expertise. Finally, to help build more evidence on how we can improve the effectiveness of CTE, the Institute of Education Sciences has launched a CTE Research Network that is conducting a national search to identify promising new CTE program models that are ready for rigorous research and evaluation.

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*Madam Secretary, approximately 80 percent of all jobs require some form of postsecondary education or training – including the more than 50 percent of jobs that are “middle skill” requiring more than a high school degree but not a four-year degree.*

*With this being said, I was excited to see the Administration’s proposal to expand Pell Grant eligibility to include short-term programs. This move will allow more Americans to access education programs that can get them the skills they need and jump right into the workforce more quickly than traditional degree programs.*

*Madam Secretary, the economy is changing rapidly, and increasingly I am seeing how important it is for constituents in my district to access the postsecondary education system throughout their professional lives.*

*This is particularly true for contemporary students who went to the workforce after high school and those who never received a higher education credential.*

*Thompson Question 3.1 (QFR 3). Can you elaborate on the President’s budget proposal to expand the Pell Grant to shorter-term programs?*

**ANSWER:** The fiscal year 2020 proposal would expand Pell Grant eligibility to students enrolled in institutions that offer high-quality, short-term programs that lead to a credential, certification, or license in a high-demand field. Currently, students enrolled in these types of postsecondary programs are not eligible to receive federal student aid due to time and program-length requirements. The proposed expansion reflects the principle that Federal laws and regulations should be updated to facilitate, not impede, students from acquiring the skills needed in today’s workforce. This proposal would help more Americans access education and training programs that provide them with the skills needed to secure well-paying jobs in high-demand fields more quickly than traditional 2-year or 4-year degree programs.

*Thompson Question 3.2 (QFR 3). How could this new access to funds help students, community colleges, and employers across the country remain competitive in this global economy?*

**ANSWER:** The Department and the Administration are committed to reforming federal student aid programs to embrace innovation and to be more responsive to labor market needs. The budget proposal will provide low-income students with more flexibility to finance the cost of enrolling in high-quality, short-term programs that lead to good paying jobs. These programs can be better tailored to suit students’ individual needs and can provide for more clear pathways into the workforce.

REPRESENTATIVE FULCHER

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*Fulcher Question 1 (QFR 1).* One reason parents and students don't pursue career and technical education is the lingering perception that these programs are an alternative to students unable to pursue and master college prep coursework. What are we doing at the Federal level to promote innovative CTE programs that will appeal to more students?

**ANSWER:** Congress gave us a good foundation to promote innovation in career and technical education (CTE) with the enactment of the *Strengthening Career and Technical Education for the 21st Century Act (Perkins V)*. As states begin to develop their state plans for the new law, the Department is actively encouraging them to use this opportunity to “rethink” career and technical education (CTE) and challenge the status quo. The Office of Career, Technical, and Adult Education (OCTAE) also is highlighting for states levers of opportunity in *Perkins V* that can be used to seed and support innovation. For example, the reserve fund authorized by section 112(c) of the law can be a powerful tool to promote changes that will improve CTE programs and the outcomes of their students. OCTAE will be sharing with states promising strategies that some states have used to take advantage of this opportunity. *Perkins V* also authorizes competitive CTE Innovation and Modernization grants to support field-initiated projects that will identify, support, and evaluate evidence-based and innovative solutions to some of the persistent challenges in CTE. On April 15, 2019, the Department announced the availability of \$2.8 million for these grants in a notice inviting applications. The President has requested \$13 million in Fiscal Year 2020 for these grants in order to support an expanded Innovation and Modernization grants program focusing on science, technology, engineering, and mathematics fields, including computer science.

We also are investing funds appropriated for national activities authorized under section 114 of *Perkins V* to help our partners at the state and local level attract and address the needs of more students. To help community and technical colleges better meet the needs of working adults who want to learn new skills, OCTAE is making available a technical assistance tool kit that offers suggestions on how to redesign associate's degree programs as progressive sequences of “stackable credentials” valued by employers. Stackable credentials are a practical way of helping students progress along the education continuum while earning credentials that give them a boost in the job market, enabling them to earn as they learn. As the President highlighted in his May 2, 2019 Executive Order on America's Cybersecurity Workforce, cybersecurity is a high-demand field that is critical to our prosperity and security. It also holds great appeal for many young people. To promote the development of more high school CTE cybersecurity programs, OCTAE intends to support a professional development initiative that will train high school CTE teachers to deliver cybersecurity programs that begin in high school and culminate at community and technical colleges with expertise in cybersecurity.

*Fulcher Question 2 (QFR 2).* Often, the problem with standards is aligning the CTE curriculum to traditional academic curriculum. Yet, CTE programs tend to be very high quality due to rigid demands by companies for good curriculum content, cutting edge knowledge, and strong practical application. In short, where industry standards and certifications are strong. What are some common qualities you see in CTE programs that demonstrate positive outcomes?

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**ANSWER:** As you indicate, strong employer involvement in program design and curriculum development is critical in CTE. Some studies suggest that providing opportunities for meaningful work-based learning also may be important. For example, a recent random assignment evaluation of the Year Up program, a program which prepares low-income young adults for careers by combining 6 months of technical and employability skill training with a 6-month internship, found that participation in Year Up increased full-time employment by 17 percentage points. In addition, the average quarterly earnings of Year Up participants were 53 percent higher than those of the control group.<sup>8</sup> Similarly, a 2012 evaluation of apprenticeship programs in 10 states that used a quasi-experimental design found that participation in apprenticeships significantly boosted earnings.<sup>9</sup>

The Department is investing to develop a more robust evidence base that will help us learn more about effective practices in CTE. The Institute of Education Sciences (IES) is supporting three causal impact evaluations of CTE programs, including new models like P-TECH in New York City. Using funds appropriated for national activities under section 114 of *Perkins V*, IES has brought together these teams of researchers under a new Network Lead to form a collaborative CTE Research Network to help increase the rigor of research in CTE more broadly. The CTE Research Network is currently conducting a national search to identify other CTE program models that are ready and suitable for rigorous evaluation. The CTE Research Network will also provide training to expand the pool of researchers who are studying CTE using rigorous research methods. Additionally, the \$2.8 million in CTE Innovation and Modernization grants that OCTAE is competing this summer will expand the evidence base by identifying and evaluating promising, field-initiated programs and strategies in CTE. The President's FY 2020 request for \$13 million for Innovation and Modernization grants would enable the Department to scale up this important new program to launch more than a dozen new projects focused on science, technology, engineering, and mathematics fields, including computer science.

*Fulcher Question 3 (QFR 3).* In recent conversations we've had, you mentioned that your Department would conduct a negotiated rulemaking process to address a package of higher education regulations in the areas of accreditation and innovation. Last week, negotiators came to a consensus on a number of reforms. Could you please explain the status of the negotiated rules and what are the next steps for this higher education regulation package?

**ANSWER:** On November 1, 2019, the Department published the final Accreditation and State Authorization Regulations, which can be found here: <https://www.federalregister.gov/documents/2019/11/01/2019-23129/student-assistance-general-provisions-the-secretarys-recognition-of-accrediting-agencies-the>. On December 11, 2019, the

<sup>8</sup> Fein, D and Hamadyk, J. (2018). *Bridging the Opportunity Divide for Low-Income Youth: Implementation and Early Impacts of the Year Up Program*. OPRE Report #2018-65, Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. Retrieved from: [https://www.acf.hhs.gov/sites/default/files/opre/pacer\\_8\\_year\\_up\\_narrative\\_6\\_1\\_18\\_508.pdf](https://www.acf.hhs.gov/sites/default/files/opre/pacer_8_year_up_narrative_6_1_18_508.pdf)

<sup>9</sup> Reed, D. et al. (2012). *An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States: Final Report*. Washington, DC: Mathematica Policy Research. Retrieved from: <https://www.mathematica-mpr.com/our-publications-and-findings/publications/an-effectiveness-assessment-and-costbenefit-analysis-of-registered-apprenticeship-in-10-states>

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Department published the Notice of Proposed Rulemaking for the TEACH Grant and Faith-Based Entities Regulations, which can be found here: <https://www.federalregister.gov/documents/2019/12/11/2019-25808/federal-perkins-loan-program-federal-work-study-programs-federal-supplemental-educational>. The Department hopes to publish a Notice of Proposed Rulemaking for the Distance Learning and Innovation Regulations soon.



REPRESENTATIVE WRIGHT

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*On January 19, 2018, the Department of Education (Department) released a pre-solicitation notice to announce the release of a solicitation for contractor support of a payment card pilot program and to outline how the Office of Federal Student Aid (FSA) expects to operate the pilot program. Specifically, the Department is implementing a new student aid payment card program pilot, which will operate in concert with the proposed Next Generation Financial Services Environment known as "Next Gen." As a part of the implementation of Next Gen, FSA is launching a payment card to facilitate federal student loan refunds, funds originated by participating schools, and funds received from other sources. Currently, students have the option to receive their loan refunds through a number of options, including electronic funds transfer, check, and cash. The pilot program will primarily be focused on testing if the payment card can provide timely delivery of loan refunds to current college students who receive regular loan refunds and will be extended to a total of four institutions of higher education serving a maximum of 25,000 students at each institution. Student loan borrowers would have to apply to use the payment card, and they would be able to apply either online or through a mobile device.*

*On October 17, 2018, FSA published in the Federal Register a Notice inviting Applications from prospective Pilot Implementers and on November 2, 2018, FSA published in the Federal Register an amendment to that Notice. The Notice indicated that "no costs or fees of any kind may be imposed on participating customers;" however, it is not clear what will happen with regard to the borrowers relationship with the banks once they are no longer students. The Notice also highlighted that the pilot program would provide a bank account to low-income students who might not otherwise have access to such account; however, there is data out there that says, in some instances, banks are often costlier for the poor than check cashers and other alternative services.*

*Wright Question 1.1 (QFR 1).* Can you share whether or not students will be charged fees or have a cost once they have completed their education?

**ANSWER:** There will be no fees or costs assessed to current or former students during the pilot program.

*Wright Question 1.2 (QFR 1).* What happens to students who leave an institution and don't complete?

**ANSWER:** During the pilot program, the Pilot Implementer will not close the accounts of students who leave an institution or do not complete their education.

## EDUCATION AND LABOR HEARING (4.10.19) – QUESTIONS FOR THE RECORD

REPRESENTATIVE TIMMONS

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*It seems when it comes to education, as well as a host of other areas, the federal government tends to overreach and overstep its bounds. I believe that parents and school teachers know what is best for students, rather than politicians from Washington, DC. Decisions and dollars should be driven towards the student.*

*Timmons Question 1.1 (QFR 1).* Would you agree with this sentiment?

**ANSWER:** I agree that parents and teachers, and not bureaucrats in Washington, know what is best when it comes to educating our children. This is why we are working to empower students and parents, through initiatives like Education Freedom Scholarships, to choose educational resources and options that fit their unique needs.

*Timmons Question 1.2 (QFR 1).* What can the federal government do to ensure that our children are receiving the best education while not overreaching in areas that are best suited for parents and teachers?

**ANSWER:** It is the role of the Federal Government to enforce the laws as enacted by Congress. Where clarification is needed on a law's requirements, the Department has worked to provide that clarification without expanding its limited role. A notable example of this balance is through the implementation of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). ESSA provides states and localities with flexibility to create systems of education that best fit their needs. For example, the amended ESEA established certain accountability requirements. However, where the law allows flexibility, the Department has encouraged States, districts, and schools, in partnership with parents and students, to innovate and create solutions that best meet the needs within their local contexts by, for example, establishing school quality or student success indicators that will best reflect school performance and identifying strategies that will be most effective at improving the State's low-performing schools. In addition, the administration's Education Freedom Scholarship (EFS) proposal is a way in which the federal government can support local education efforts. The EFS proposal would empower students and families to choose the best educational setting for them – regardless of where they live, how much they earn, and how they learn. The proposal gives those closest to students the freedom to decide what's best for them. No family is forced to accept a scholarship, no taxpayer is forced to contribute, no organization is forced to participate, and no State is forced to participate. This tax credit would help extend education choice to the greatest number of families possible while respecting federalism and doing no harm to existing K-12 scholarship programs.

*In your FY20 budget, you request \$200 million for Teacher and School Leader Incentive Grants. You mention this program would support "human capital management Systems that focus on high quality mentoring or residencies for novice teachers."*

*Timmons Question 2.1 (QFR 2).* Could you describe your vision for such a program?

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**ANSWER:** Elevating the teaching profession and improving student outcomes requires rethinking how novice teachers develop their skills. School-wide seminars and large-group workshops have been largely ineffective at improving teacher quality; however, recent studies have found that one-on-one continuous mentoring is a promising approach to improving instructional practice in novice teachers. An entity awarded funds under the high-quality mentoring priority could implement or expand instructional coaching, pairing novice teachers with an expert mentor to conduct frequent classroom observations and provide individualized feedback and suggestions. Grantees would be assessed to gauge the effects of mentoring on the teaching skills and retention of novice teachers. Additionally, grantees could develop teacher residency programs for novice teachers. Effective residency programs often combine pedagogical coursework, classroom experience, and mentoring from an experienced master teacher. Projects would receive an independent evaluation of their effectiveness, building evidence around innovative and successful approaches to teacher preparation.

*Timmons Question 2.2 (QFR 2).* What would be the process for which a teacher is selected for this grant?

**ANSWER:** Teacher and School Leader (TSL) Incentive Grants are awarded competitively to local school districts, State educational agencies, the Bureau of Indian Education, or non-profit organizations in partnership with one of these entities. An entity awarded funds to expand high-quality mentoring would have the flexibility to determine which teachers to select for one-on-one mentoring or offer the opportunity to apply for a residency program.

*Your budget highlights proposals under Education Innovation and Research (EIR) and the Teacher and School Leader Incentive Grant program.*

*Timmons Question 2.3 (QFR 2).* Could you speak to how these ideas came into fruition?

**ANSWER:** Improving continuing education for teachers and reforming teacher preparation are central pillars of the Department's comprehensive strategy to elevate the teaching profession. While research suggests that teacher performance is a major driver of student achievement, the significant investments in teacher preparation and professional development have not led to substantial improvements in teaching practices. The Department has engaged in conversations with hundreds of teachers across the country and hosted several teacher roundtables, often hearing how constricted teachers feel in their own professional development. Teachers are given little freedom to choose specific courses relevant to their professional development needs and aspirations, which may vary significantly among teachers at different phases of their careers. Stand-alone workshops and one-size-fits-all trainings often fall short of enhancing teaching skills and improving outcomes for students.

The Department developed the Education Innovation and Research (EIR) professional development demonstration to empower teachers to select and pay for individualized professional development, freeing them to take ownership of their professional growth.

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As an EIR demonstration program, the proposal would pair the stipends with rigorous, project-level evaluations to build a repository of evidence-based practices for schools and districts to consider, potentially driving significant improvement in the effectiveness of other sources of Federal professional development funds. Additionally, the Department plans to propose a new competition for the Teacher and School Leader (TSL) Incentive Grants program to give priority to applicants that expand high-quality mentoring of novice teachers. Providing teachers with individualized support is a promising approach to elevate teacher effectiveness and raise student achievement.

*Timmons Question 2.4 (QFR 2).* Did you consult with teachers and/or school leaders before crafting the proposal?

**ANSWER:** As noted in the previous response, consultation with teachers was a major impetus for this proposal. The Department often heard how limited teachers feel in their professional development and believes that empowering teachers to choose their own professional development activities is critical to elevating the teaching profession.

*I understand that there are restrictions placed on what State VR agencies are allowed to spend the mandated 15% of federal funds received. This 15% must be spent on students between the ages of 13 and 21 years old and can only provide pre-employment transition services in five areas. I understand that certain State agencies, such as the one in South Carolina, struggles to spend that 15%, which comes out to be around \$9 million, because of these restrictions and because they cannot use these funds to provide services such as transportation, assisting with tuition, etc. for these students.*

*Timmons Question 3.1 (QFR 3).* Do you support allowing more flexibility within the RSA guidelines in the interpretation of how these funds can be used to provide the support necessary to carry out the services in those five areas?

**ANSWER:** In recent months, the Department has sought the input of State VR leaders and other stakeholders and has heard from a number of States about needed flexibility in how funds reserved for the provision of pre-employment transition services are administered. The Department is committed to providing States with as much flexibility as possible, within the constructs of the law, in implementing their programs. The Department is considering, and will continue to consider, any request for flexibility that it has the authority to provide.

*Timmons Question 3.2 (QFR 3).* Would you agree that taking into consideration a state's VR program structure and the needs of the constituents is important when determining guidelines placed on spending?

**ANSWER:** States are in the best position to determine how to structure the State's VR programs to meet the needs of their citizens. The Rehabilitation Act of 1973, through the Unified or Combined State Plan requirements, permits States to structure their VR program in the manner that best meets the needs of their citizens (34 C.F.R. 361.13). States are responsible for meeting the same VR requirements regardless of whether they

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select to administer the program through a Combined VR agency or through separate Blind and General VR agencies.

When a State designates a separate State agency to administer or supervise the administration of a separate VR services portion of the Unified or Combined State Plan relating to VR services for individuals who are blind, that part of the VR services portion of the Unified or Combined State Plan must separately conform to all applicable requirements (34 C.F.R. 361.10(b)). The State is able to direct the Federal funds to enable the Blind and General VR agencies to best meet the needs of their respective constituents. The State determines the percentage of the State's VR formula allotment that RSA awards to the General and Blind VR agencies. Additionally, during the period of the award, Blind and General VR agencies may request that RSA transfer unused VR funds from one State VR agency to the other in order to ensure the State's ability to use available Federal funds to serve individuals with disabilities in the State. Therefore, States have the ability to determine how their VR program is structured and how the VR funds are allocated within the State to best meet the needs of the respective VR agencies, if two VR agencies are created. States can use these flexibilities to meet constituent needs and the VR award-spending requirements.

In order to ensure that States operate in a manner consistent with the Rehabilitation Act, and other Federal requirements, RSA applies the same program and fiscal requirements regardless of how a State chooses to structure its VR program.

[Whereupon at 2:35 p.m., the committee was adjourned.]

