

July 30, 2021

Nkemjika Ofodile-Carruthers  
U.S. Department of Education  
400 Maryland Avenue SW, Room 4W308  
Washington, DC 20202

RE: Proposed Priorities and Definitions-Secretary's Supplemental Priorities and Definitions for Discretionary Grants Programs, Docket Number ED-2021-OPEPD-0054

Dear Dr. Ofodile-Carruthers:

The undersigned organizations write to respond to the Proposed Priorities and Definitions-Secretary's Supplemental Priorities and Definitions for Discretionary Grants Programs. In particular, we submit comments in response to Priority 1, addressing the impact of COVID-19 on students, educators, and faculty, and Priority 2, promoting equity in student access to educational resources, opportunities, and welcoming environments.

**Priority 1: In Order to Address the Impact of COVID-19, the Department Must Fund Public Education, Not Private School Vouchers**

*Public Schools Are Best Equipped to Adequately Support Students*

We recognize the hardship many students and families have faced as a result of the COVID-19 pandemic and appreciate the Department's proposed Priority 1. As you work to support students, educators, and faculty in the wake of COVID-19, we urge you to support public education and oppose mechanisms to spend federal dollars on private schools, including through private school voucher programs. It is during this challenging time that the federal government should focus on providing more resources to our public schools, which serve the vast majority of our nation's students, particularly students from under-resourced communities and students of color, rather than siphoning limited resources to private schools.

Under the previous Administration, this Department created a discretionary grant program to allow states to use COVID-19 relief funds for private school voucher programs. Congress had passed the CARES Act in March 2020, which included a provision setting aside 1% of the \$30.75 billion allotted to the Education Stabilization Fund for grants to States with the highest coronavirus burden. The Department then created the Education Stabilization Fund-Rethink K12 Education Models Grants (ESF-REM) program and provided those dollars to states for uses including "microgrants"—or vouchers—that could be used by parents to pay for remote

learning options, including for private school education. In total, the Department awarded approximately \$37 million to states for microgrants voucher programs.<sup>1</sup>

The Department's ESF-REM grant program diverted funding that could have been used by states to support public education to private education providers. The program is rife with accountability problems. By design, the unaccountable online vendors receiving the voucher funding cannot provide the same well-rounded, comprehensive education as public school. And these private education providers do not have the same obligation to appropriately serve all students, which is especially problematic for students with disabilities, as they often cannot provide the same quality and quantity of services available to students in public schools, including those mandated under each student's IEP.

This diversion of funds undercuts the Department's commitment to ensuring equitable opportunities for all students. To best address the needs of students impacted by the COVID-19 pandemic, a better and more equitable use of federal funds is to support our public schools.

#### *Private Schools Are Not in Need of Additional Federal Funding*

Private schools have received billions of dollars in federal funds through COVID-19 relief legislation. The Paycheck Protection Program (PPP) provided assistance to small businesses and nonprofit organizations, including private schools, granting them forgivable loans of up to \$10 million to cover payroll and other operational expenses. Many private and religious schools have utilized this program and received significant amounts of government funding.<sup>2</sup> In contrast, public schools were excluded from accessing PPP funding.

Private schools also received billions through the Governor's Emergency Education Relief (GEER) fund, a flexible funding stream which the Department authorized for use by state governors as a mechanism to fund their private school voucher programs. Congress later created the Emergency Assistance to Non-Public Schools (EANS) program, which used GEER funds to pay for a limited range of pandemic-related equipment and services in private schools.<sup>3</sup>

Not only have these programs reduced available funding overall that could have benefited public schools, but they have also created additional administrative burdens for the Department. For example, the American Rescue Plan added safeguards to the EANS program to

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<sup>1</sup> U.S. Dep't of Educ., [Education Stabilization Fund Rethink K-12 Education Models Discretionary Grant Program Award Fact Sheet](#) (July 29, 2020).

<sup>2</sup> Samantha Sokol, et al., Ams. United for Separation of Church & State, [The Paycheck Protection Program Has Provided Billions in Federal Funds to Private and Religious Schools](#), 5 (Jul. 29, 2020). Under PPP, private schools received between \$2.67 billion and \$6.47 billion, with some private schools receiving millions more in federal dollars under the PPP program than the entire public school district in which they are located received under the CARES Act.

<sup>3</sup> Consolidated Appropriations Act of 2021, Pub. L. No. 116-260 § 312.

ensure that no funds could flow directly to private schools through reimbursements, as well as language requiring that the funds be targeted to support private schools serving high numbers of low-income students.<sup>4</sup> Yet there remain concerns about how the EANS money is spent and whether the funding is benefiting private schools with discriminatory policies. The Department must provide sufficient oversight, data collection, and enforcement to ensure that students, especially those from underserved communities, do not face discrimination or additional barriers to participation in the EANS program. The Department would avoid these problems in the future by directing funding to public schools rather than private schools.

## **Priority 2: In Order to Ensure Equity, the Department Must Fund Public Education, Not Private School Vouchers**

The Department's second priority is to promote equity in student access to educational resources, opportunities, and welcoming environments. To achieve this goal, the Department must not allow discretionary grant programs to fund private school vouchers.

Private school vouchers undermine our public schools, which provide education to 90% of our country's students. Public schools are a cornerstone of our communities, bringing together students regardless of economic status, disability, religion, race, ethnicity, English fluency, sexual orientation, gender identity, or any other personal characteristic. Voucher programs, however, weaken our nation's public schools by diverting desperately needed resources away from the public school system to fund the education of a few, select students in private, often religious, schools.

Voucher programs have proven ineffective in improving students' academic achievement, lack accountability, deprive students of the rights and protections they would receive in public schools, and fail in providing adequate services for students most in need, including students with disabilities, low-income students, and students who are English learners. Funding for private school voucher programs does not increase equitable access for students in the program, and additionally weakens the public schools, which are responsible for providing access to educational opportunities for all students.

### *Private School Vouchers Do Not Lead to More Equitable Access to Educational Resources*

For students using vouchers, there is no guarantee that they will receive better educational opportunities or improvements in their academic achievement. On the contrary, studies demonstrate that vouchers do not improve student achievement and, in many states, have led

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<sup>4</sup> American Rescue Plan of 2021, Pub. L. No. 117-2 § 2002.

to a decline in achievement. Recent studies of the Louisiana,<sup>5</sup> Indiana,<sup>6</sup> and Ohio<sup>7</sup> voucher programs have revealed that students who used vouchers perform worse academically than their peers. In addition, studies of voucher programs in Milwaukee,<sup>8</sup> Cleveland,<sup>9</sup> and the District of Columbia<sup>10</sup> found that students offered vouchers showed no improvement in reading or math over those not in the program.

Voucher programs also fail to offer participating students greater educational resources. Students in the District of Columbia voucher program, for example, were found to be less likely to have access to key services such as English as a Second Language programs, learning supports, special education supports and services, and counselors than students who were not part of the program.<sup>11</sup> Similarly, a survey of the Milwaukee voucher program conducted in 2013 found that out of 110 Milwaukee voucher schools surveyed, 39 reported having no art, music, physical education, library or technology specialist teachers.<sup>12</sup>

And for students continuing their education in public schools, vouchers can be harmful because they divert critical resources away from the public schools. Voucher programs may result in a concentration of the students who require the greatest number of resources in public schools. Because private schools may refuse to admit or to provide adequate services for students with disabilities, English learners, and other students who may be more expensive to educate,<sup>13</sup> these students are more frequently educated in public schools. These private schools may also “counsel out” or expel students they deem to be “high cost.”<sup>14</sup> Another contributing factor is that parents may pull their children from the voucher program and return them to public schools due to the lack of necessary services or supports or failure to receive the same legal protections as in public schools. For those students remaining in public schools, they are left

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<sup>5</sup> Jonathan Mills & Patrick Wolf, [The Effects of the Louisiana Scholarship Program on Student Achievement after Four Years](#) 4 (EDRE Working Paper No. 2019-10, May 10, 2019).

<sup>6</sup> Joseph R. Waddington & Mark Berends, [Impact of the Indiana Choice Scholarship Program: Achievement Effects for Students in Upper Elementary and Middle School](#), 37 J. Pol’y Anal. & Management 783, 796, 803 (2018).

<sup>7</sup> David Figlio & Krzysztof Karbownik, Thomas B. Fordham Inst., [Evaluation of Ohio’s EdChoice Scholarship Program: Selection, Competition, and Performance Effects](#) 2 (2016).

<sup>8</sup> E.g., Patrick J. Wolf, School Choice Demonstration Project, Univ. of Ark., [The Comprehensive Longitudinal Evaluation of the Milwaukee Parental Choice Program: Summary of Final Reports](#) (Apr. 2010).

<sup>9</sup> E.g., Jonathan Plucker et al., Ctr. for Evaluation & Educ. Policy, Univ. of Ind., [Evaluation of the Cleveland Scholarship and Tutoring Program, Technical Report 1998-2004](#), 166 (Feb. 2006).

<sup>10</sup> See, e.g., Ann Webber, et al., U.S. Dept. of Educ., Inst. of Educ. Sci., [Evaluation of the DC Opportunity Scholarship Program: Impacts Three Years After Students Applied](#) 4-5 (May 2019).

<sup>11</sup> U.S. Dep’t of Educ., [Evaluation of the DC Opportunity Scholarship Program: Final Report](#) 19-20 (June 2010).

<sup>12</sup> Erin Richards, [Report: Choice Schools Lack Specialty Teachers](#), Milwaukee J. Sentinel (Feb. 13, 2013).

<sup>13</sup> See, e.g., Julie F. Mead & Suzanne E. Eckes, Nat’l Educ. Policy Ctr., [How School Privatization Opens the Door for Discrimination](#) (Dec. 2018).

<sup>14</sup> See, e.g., Luis Benveniste et al., *All Else Equal: Are Public and Private Schools Different?* (2003); Selene Almazan & Denise Stile Marshall, Council Parent Att’ys & Advocates, [School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice](#) (June 2016).

with fewer resources. This is especially detrimental at a time when public schools in many states are not adequately funded.<sup>15</sup>

### *Private School Vouchers Do Not Lead to More Equitable Access to Educational Opportunities*

Private school vouchers also undermine the Department’s goal to ensure equitable access to educational opportunities by excluding certain students from participating and denying students adequate services and protections.

Private school voucher programs often allow for discrimination by private schools, making the programs inaccessible to many students. Private voucher schools frequently refuse to enroll students for many reasons, including based on their own or their families’ religion or LGBTQ status or based on students’ disabilities, past academic achievement, and disciplinary histories. Additionally, many private schools discipline or expel students based on their sexual orientation, lack of academic achievement, and other bases upon which public schools are not allowed to discriminate.

Students with disabilities may also be categorically excluded from private school voucher programs because private schools cannot adequately serve them. Private schools accepting vouchers do not provide students with disabilities with the same quality and quantity of services available to students in public schools, including those mandated under each student's Individualized Education Program (IEP). Students who leave the public schools with a voucher forfeit many of the protections provided to students under the Individuals with Disabilities Education Act (IDEA)—including the right to a Free Appropriate Public Education (FAPE) tailored to their individual needs—because they are considered parentally placed in private schools.

Another group of students that may be excluded from participating in private school voucher programs are low-income students. This is because the cost of tuition and fees at schools that accept vouchers generally exceeds the amount of the voucher, making voucher schools unaffordable for most low-income families.<sup>16</sup> For example, a 2016 Government Accountability Office report surveying state voucher programs found that the majority of programs did not place a cap on private school tuition,<sup>17</sup> allowing private schools to charge more than the voucher award. Voucher programs also frequently shift educational expenses to parents, requiring families to separately pay for services that are offered by public schools for no charge such as transportation, special education services, and free or reduced-price lunches for qualifying students.<sup>18</sup> As a result, only families with the money to cover the cost of the rest of

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<sup>15</sup> Danielle Farrie & David G. Sciarra, Educ. Law Ctr., [Making the Grade 2020: How Fair Is School Funding in Your State?](#) (2021).

<sup>16</sup> See, e.g., Meghan Casey Whittaker, [The Average Voucher Doesn’t Cover Full Cost of Private School, NCLD Data Analysis Shows](#), Understood (Nov. 21, 2017).

<sup>17</sup> U.S. Gov’t Accountability Office, GAO-16-712, [Private School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students](#), 25 (2016).

<sup>18</sup> See, e.g., Whittaker, *supra* note 16.

the tuition and additional expenditures such as uniforms, transportation, books, and other supplies can actually use a voucher. In the end, the families most likely to use a voucher are the ones who could already afford to send their kids to private schools.<sup>19</sup>

### *Private School Vouchers Do Not Lead to More Equitable Access to Welcoming Environments*

Private school vouchers can have the effect of reducing diversity in schools. What is more, private schools do not have the same duty to provide an inclusive education to all students. As a result, private school voucher programs can lead to environments that are less welcoming to all students.

Unlike public schools, which must comply with federal civil rights including Titles IV and VI of the Civil Rights Act, Title IX of the Education Amendments Act of 1972, the Individuals with Disabilities Education Act, and Title II of the Americans with Disabilities Act, private school vouchers do not provide students with the same rights and protections. And students who attend private schools do not have the same free speech and religious freedom protections under the First Amendment, the same due process or other constitutional and statutory rights guaranteed to them as in public schools, or the same clear systems for oversight, reporting violations, or enforcing penalties for noncompliance as children and families attending public schools.

In addition to stripping students of critical civil rights and constitutional protections, private school voucher programs have a sordid history rooted in attempts in the South to allow white students to evade integration orders in the wake of *Brown v. Board of Education*.<sup>20</sup> Even today, national data show that private schools tend to be more segregated than similarly situated public schools and enroll higher populations of white students compared to public schools. Nationwide, 69% of private school students are white, 9% are Black, and 10% are Hispanic or Latino.<sup>21</sup>

In some state voucher programs, segregation rates are even higher. For example, a 2016 study found that Louisiana's voucher program had a negative impact on integration in private schools.<sup>22</sup> Similarly, in Milwaukee a study found that 85% of Black students in the voucher program attended "intensely segregated" schools, as opposed to around 77% of those in public schools.<sup>23</sup> In Indiana, the voucher program has been found to increasingly benefit higher-

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<sup>19</sup> See, e.g., Robert Shand & Henry M. Levin, Nat'l Educ. Pol'y Ctr., [Estimating a Price Tag for School Vouchers](#) 4 (2021).

<sup>20</sup> Chris Ford, et al., Ctr. for Am. Progress, [The Racist Origins of Private School Vouchers](#) (July 12, 2017).

<sup>21</sup> Nat'l Center for Educ. Statistics, [School Choice in the United States: 2019](#), 22 (Sept. 2019).

<sup>22</sup> Jonathan N. Mills, et al., Educ. Research Alliance, [How Has the Louisiana Scholarship Program Affected Students? A Comprehensive Summary of Effects after Two Years](#) (Feb. 2016).

<sup>23</sup> Lisa Kaiser, [Still Separate, Still Unequal](#), Shepherd Express (May 14, 2014).

income white students, many of whom are already attending private schools, with white students making up 60% of the students who received vouchers in the state program.<sup>24</sup> Even setting aside the historical roots of vouchers, today some voucher advocates continue to voice support for using vouchers to segregate students into environments where they are separated from peers that have differing opinions.<sup>25</sup> While public schools teach all children, private schools can have their own curriculum and exclude certain viewpoints. And most states' voucher programs do not have any curriculum requirements in place, meaning that religious schools accepting vouchers can teach religious curriculum<sup>26</sup> and require students to participate in religious activities. In addition, some private voucher schools also teach anti-LGBTQ curriculum,<sup>27</sup> and some promote harmful conversion therapy for LGBTQ students.<sup>28</sup>

Given the effect of private school vouchers in exacerbating rates of segregation, failing to adequately safeguard students' civil rights, and promoting exclusionary policies, it is difficult to see how private school vouchers could lead to equitable access to more welcoming environments. Accordingly, the Department must not allow federal funds to support private school voucher programs.

## Conclusion

Thank you for the opportunity to submit comments on the Secretary's supplemental priorities for discretionary grant programs. For the above reasons, we urge the Department to continue to support public schools and prevent any funding for private school voucher programs.

Sincerely,

AASA, The School Superintendents Association  
American Atheists  
American Federation of State, County and Municipal Employees (AFSCME)  
American Federation of Teachers  
American Humanist Association  
Americans United for Separation of Church and State  
ADL (Anti-Defamation League)  
Association of School Business Officials International (ASBO)  
Baptist Joint Committee for Religious Liberty (BJC)

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<sup>24</sup> Chris Ford, et al., Ctr. for Am. Progress, [The Racist Origins of Private School Vouchers](#) 8 (July 12, 2017).

<sup>25</sup> See Cato Inst. [Public School Battle Map](#) (last visited July 21, 2021).

<sup>26</sup> See, e.g., Rebecca Klein, [Voucher Schools Championed By Betsy DeVos Can Teach Whatever They Want. Turns Out They Teach Lies.](#), HuffPost (Dec. 7, 2017).

<sup>27</sup> E.g., Southern Educ. Found., [Issue Brief: Georgia's Tax Dollars Help Finance Private Schools with Severe Anti-Gay Policies, Practices, & Teachings](#) (Jan. 2013) ("at least 115 private schools [participating in the tax-credit voucher program] have explicit anti-gay policies or belong to associations that condemn homosexuality").

<sup>28</sup> Rebecca Klein, [Millions Of Taxpayer Dollars Are Going to Schools that Push Conversion Therapy](#), HuffPost (June 10, 2020) (Florida private schools accepting millions in taxpayer-funded vouchers promote conversion therapy for LGBTQ students).

Center for Inquiry (CFI)  
Central Conference of American Rabbis  
Clearinghouse on Women's Issues  
Council for Exceptional Children  
Council of Administrators of Special Education  
Council of the Great City Schools  
Feminist Majority Foundation  
GLSEN  
Interfaith Alliance  
National Association of Elementary School Principals  
National Association of School Psychologists  
National Center for Learning Disabilities  
National Education Association  
National PTA  
National Rural Education Advocacy Collaborative  
National School Boards Association  
Network for Public Education  
Public Funds Public Schools  
Union for Reform Judaism  
Women of Reform Judaism