

June 2, 2020

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Charles Schumer  
Minority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
Speaker of the House  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Kevin McCarthy  
Minority Leader  
United States House of Representatives  
Washington, D.C. 20515

RE: Support Policy Provisions in the HEROES Act to Prevent Funneling Federal Funds to Private Schools

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Pelosi, and Minority Leader McCarthy:

The undersigned organizations write to voice our support for language in the “Health and Economic Recovery Omnibus Emergency Solutions Act” (HEROES Act) that would prevent the creation of private school voucher programs and other mechanisms to funnel public dollars to private schools. We also urge you to oppose any additional attempts to add provisions to this stimulus bill that would fund private school voucher programs.

We recognize the hardship many students and families are currently facing as a result of the COVID-19 pandemic. The pandemic has led to an unprecedented interruption to our school systems, which has forced students and educators out of the classroom and left children and families without the same access to educational programs and services. It is during this challenging time that the federal government should focus on providing more resources to our public schools and public school educators, who are best equipped to serve all students, rather than siphoning limited resources to private schools and for-profit online learning programs.

**Private School Vouchers Undermine Public Schools and Fail to Adequately Serve All Students**

Public schools provide education to 90% of our country’s students. Private school voucher programs undermine 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,<sup>1</sup> lack accountability,<sup>2</sup> and fail to provide students with the rights and protections they would receive in public schools.<sup>3</sup> Funneling federal dollars to private and unaccountable education providers in a time of hardship for schools, educators, students, and families across the county is especially bad policy.

Private school voucher programs have also been shown time and again to fail to meet the needs of students most in need, including students with disabilities.<sup>4</sup> Private schools accepting vouchers would likely have no obligation to accept nor appropriately serve students with disabilities. And, voucher schools often cannot provide the same quality and quantity of services available to students in public schools, including those mandated under each student's IEP. Given the additional challenges online classes present for some students, vouchers could not possibly address the needs of these students, or fund the accommodations and services required by the student's IEP.

### **This Legislation Must Explicitly Foreclose the Use of Stimulus Dollars for Private School Vouchers**

We support striking the language in Section 18001(a)(3) of the CARES Act, which set aside 1% of the Education Stabilization Fund for grants to states with the “highest coronavirus burden.”<sup>5</sup> Although nothing in the language of the CARES Act stated that this fund should be used for school vouchers, Secretary DeVos decided to divert these funds to a private school voucher program and other programs that advance her privatization agenda. Most egregiously, the “Rethink K-12 Education Models Discretionary Grant Program” allows states to use their funding to provide “microgrant” vouchers to families, which would allow families to use the funding for a variety of educational expenses, including tuition for private or for-profit online learning courses and services provided by private schools.<sup>6</sup>

This program, like other private school voucher programs, would be rife with accountability problems. The microgrants program could divert relief funds to unqualified, unaccountable online vendors, which by design, cannot provide the same well-rounded, comprehensive

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<sup>1</sup> *E.g.*, Jonathan N. Mills & Patrick J. Wolf, Univ. of Ark., [The Effects of the Louisiana Scholarship Program on Student Achievement After Four Years](#) (Apr. 2019); Megan Austin et. al., Russell Sage Found. J. of the Social Sciences, [Voucher Pathways and Students Achievement in Indiana's Choice Scholarship Program](#) (2019); David Figlio & Krzysztof Karbownik, Fordham Institute, [Evaluation of Ohio's EdChoice Scholarship Program: Selection, Competition, and Performance Effects](#) (July 2016); U.S. Dep't of Educ., [Evaluation of the DC Opportunity Scholarship Program: Impacts Three Years After Students Applied](#) (May 2019).

<sup>2</sup> *E.g.*, 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](#) (2016); U.S. Gov't Accountability Office, GAO-13-805, [District of Columbia Opportunity Scholarship Program: Actions Needed to Address Weaknesses in Administration and Oversight](#) (2013).

<sup>3</sup> Julia F. Mead & Suzanne E. Eckes, Nat'l Educ. Policy Ctr., [How School Privatization Opens the Door for Discrimination](#) (Dec. 2018); Bayliss Fiddiman & Jessica Yin, Ctr for Amer. Progress, [The Danger Private School Voucher Programs Pose to Civil Rights](#), (May 13, 2019).

<sup>4</sup> *See, e.g.*, U.S. Gov't Accountability Office, GAO-18-94, [Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities](#) 20-26 (2018); Joint Committee on Performance Evaluation and Expenditure Review, [A Statutory Review of Mississippi's Education Scholarship Account \(ESA\) Program](#) (2018); Patrick J. Wolf et al., School Choice Demonstration Project, Univ. of Ark., [Special Education and the Milwaukee Parental Choice Program](#) 17 (2012).

<sup>5</sup> Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 18001 (2020).

<sup>6</sup> Notice Inviting Applications (NIA) for the FY 2020; Education Stabilization Fund-Rethink K-12 Education Models (ESF-REM) Discretionary Grant Program, 85 Fed. Reg. 25,411 (May 1, 2020).

education as in a brick-and-mortar school. The efficacy of similar programs has been shown repeatedly to be academically inferior to traditional public schools.<sup>7</sup> Without the inclusion of accountability measures such as requiring participating private schools to comply with the same teacher standards, curriculum, reporting, and testing requirements as public schools, there is no way to gauge whether the program is effective. And, without oversight provisions to ensure adequate administration of the program, there is great risk for waste, fraud, and abuse. Congress should not send federal dollars to such an unaccountable program.

The CARES Act did not explicitly authorize a microgrant voucher program, but that did not prevent the Department of Education from creating one. Accordingly, we support provisions in this bill that foreclose a similar use of funding and ensure that no money is set aside for the Secretary to define in a way that would allow for private school vouchers.

### **This Legislation Must Clarify the Scope of Equitable Services**

We also support the addition of language to clarify that equitable services should be provided to students eligible under Title I only. The language in the HEROES Act will fix a problem created by the Department of Education’s misinterpretation of language regarding equitable services in the CARES Act to allow for money to be disproportionately redirected to private schools.<sup>8</sup> Under the Department’s April 30 guidance, equitable services provided to private schools must be allocated on the basis of total number of students enrolled in private schools and “may benefit a non-public school . . . or all students in a non-public school.”<sup>9</sup> These provisions permit equitable services to benefit entire schools or student populations at nonpublic schools, regardless of the students’ income level or eligibility under Title I of ESEA, in contradiction with both the language of the CARES Act and the purpose of Title I.<sup>10</sup>

Title I equitable services was designed to benefit eligible students in need of greater resources, and the CARES Act explicitly provided additional resources to these students. The Department of Education guidance, however, suggests that public school districts must set aside funding to serve all students who attend a private school, regardless of those students’ need or financial situation. The result is that the CARES Act funding is being diverted from low-income public school students to wealthy private school students. Indeed, the Department’s guidance flips the idea of equitable services on its head—creating more inequity instead of less.

This guidance also directly contradicts the language in the CARES Act that says that equitable services must be provided “in the same manner as” Title I equitable services,<sup>11</sup> meaning that services should be provided based on the number of low-income students living in the LEA who attend non-public schools. If Congress’ intent were to provide funding for services for all private

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<sup>7</sup> *E.g.*, James L. Woodworth et al., Center for Research on Education Outcomes, [Online Charter School Study](#) (2015); June Ahn & Andrew McEachin, Educational Researcher, [Student Enrollment Patterns and Achievement in Ohio’s Online Charter Schools](#) (2017).

<sup>8</sup> U.S. Dep’t of Educ., [Providing Equitable Services to Students and Teachers in Non-Public Schools under the CARES Act Programs](#) (Apr. 30, 2020) (Equitable Services Guidance).

<sup>9</sup> Equitable Services Guidance at 7.

<sup>10</sup> *See* 20 USC § 6320.

<sup>11</sup> Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 18005 (2020).

school students, the CARES Act would have included language indicating divergence from Title I requirements, but it did not. Accordingly, we support the language in the HEROES Act that clarifies that equitable services are meant to benefit students eligible under Title I.

### **This Legislation Must Not Include Any Mechanism to Use Taxpayer Funds for Private School Expenditures**

In addition to supporting language in this bill limiting funding for private schools, we also oppose the addition of any other provision that would funnel public dollars to private schools or create tax incentives for private school expenditures. We are aware that some Members of Congress have shown support for a proposal that would expand the use of 529 education accounts to cover “qualifying expenses incurred in connection with learning from home . . . includ[ing] curriculum and curricular materials, books or other instructional materials, online educational materials, tuition for tutoring or educational classes outside of the home, and educational therapies for students with disabilities.”<sup>12</sup> A proposal like this would give wealthy families a tax break while decreasing available funding for public education budgets, hurting the vast majority of students served by our nation’s public schools.

According to a 2012 GAO report, only 3% of American families utilize Coverdell or 529 accounts.<sup>13</sup> Those opting for the accounts have roughly 25 times the median financial assets and about three times the median income of those who do not use these accounts.<sup>14</sup> Therefore, it is likely that the families who will benefit from the expansion of 529 accounts are those who already have the means to send their children to private school without a need for financial aid or tax benefits. Additionally, the expansion of 529 accounts could perpetuate racial inequities in education as minority families are less likely to participate in 529 plans than non-minority families.<sup>15</sup> Congress should not allow funding authorized under this bill to benefit wealthy Americans to the detriment of our public schools and public school students.

In addition, we urge you to reject proposals that would provide both temporary and long-term tax policy changes to incentivize parents to educate their children in private schools. Specifically, we oppose changes to tax credits and deductions, such as allowing private school tuition to be considered the same as philanthropic aid, which would predominantly benefit the 70% of families with a household income above \$75,000 who educate their children in private schools.<sup>16</sup>

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<sup>12</sup> [Letter from Representative Bryan Steil to Speaker Pelosi, Leader McCarthy, Leader McConnell, and Leader Schumer](#) (Apr. 15, 2020).

<sup>13</sup> U.S. Gov’t Accountability Office, GAO-13-64, [Higher Education: A Small Percentage of Families Save in 529 Plans](#) (2012).

<sup>14</sup> *Id.*

<sup>15</sup> *See id.* (finding that a larger proportion of the families surveyed who had 529 accounts or Coverdell accounts were non-minorities).

<sup>16</sup> [See Letter from American Federation of Children and Others to Speaker Pelosi, Senate Majority Leader McConnell, Minority Leader Schumer, and House Minority Leader McCarthy](#) (May 13, 2020).

## **Conclusion**

This unprecedented pandemic should not be exploited to promote unaccountable, inequitable, and ineffective private school vouchers or otherwise divert public funding for private schools. We urge you to support every effort to prevent funding for private school vouchers allowing for school privatization into the next COVID-19 relief package.

Sincerely,

AASA, The School Superintendents Association  
African American Ministers In Action  
American Association of Colleges for Teacher Education  
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  
The Arc of the United States  
Association of Educational Service Agencies  
Association of School Business Officials International (ASBO)  
Baptist Joint Committee for Religious Liberty (BJC)  
Center for Inquiry  
Center for Public Representation  
Central Conference of American Rabbis  
Clearinghouse on Women's Issues  
Council for Exceptional Children  
Council of Administrators of Special Education  
Council of Great City Schools  
Council of Parent Attorneys and Advocates  
Disciples Center for Public Witness  
Disciples Justice Action Network  
Education Law Center  
Equal Partners in Faith  
Feminist Majority Foundation  
Freedom From Religion Foundation  
GLSEN  
In the Public Interest  
Interfaith Alliance  
Learning Disabilities Association of America  
NAACP  
National Association of Elementary School Principals  
National Association of Federally Impacted Schools  
National Association of Secondary School Principals  
National Association of School Psychologists  
National Center for Learning Disabilities

National Council of Jewish Women  
National Disability Rights Network  
National Education Association  
National PTA  
National Rural Education Advocacy Collaborative  
National Rural Education Association  
National School Boards Association  
Network for Public Education  
People For the American Way  
Public Funds Public Schools  
School Social Work Association of America  
Secular Coalition for America  
Teacher Education Division of the Council for Exceptional Children  
Union for Reform Judaism  
Women of Reform Judaism