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November 13, 2017

Ms. Jennifer Bell-Ellwanger  
Acting Assistant Secretary  
Office of Planning, Evaluation and Policy Development  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

*Submitted via regulations.gov*

Re: Docket ID: ED-2017-OS-0078  
Proposed supplemental priorities and definitions

Dear Ms. Bell-Ellwanger:

On behalf of our three million members, the National Education Association (NEA) submits these comments in response to the Department of Education's (ED's) public notice, "Proposed Supplemental Priorities and Definitions for Discretionary Grant Programs," at 82 Fed. Reg. 47484 (October 12, 2017). For the reasons described below, we strongly oppose Priority 1, which proposes to make it a federal government priority to divert taxpayer dollars from public to private schools, including for-profit schools, sectarian schools, and unaccountable charter schools.

**Proposed Priority 1: Empowering families to choose a high-quality education that meets their child's unique needs**

We strongly oppose this proposed priority, for three major reasons.

- 1. This proposed priority would compound ill-advised decisions of many states to disinvest in public schools.**

The proposed priority is an attempt to divert taxpayer dollars to fund a school privatization agenda. The definition of "educational choice" in the proposed priorities would irresponsibly permit nearly anyone claiming to create a "personalized path for learning" to be a potential recipient of taxpayer funding.

Our nation needs to increase, not reduce, our investment in strong public schools serving all students, families, and communities. Diverting federal funding to private schools and creating additional unaccountable charter schools are counter-productive priorities.

## Private school vouchers

Private school voucher programs do not serve all students, fail to improve academic achievement, undermine public education funding, harm religious freedom, and lack critical accountability for taxpayers.

Recent studies of the Louisiana,<sup>1</sup> Indiana,<sup>2</sup> Ohio,<sup>3</sup> and the District of Columbia<sup>4</sup> voucher programs revealed that students in these programs perform worse academically than their peers in traditional public schools. In addition, studies of long-standing voucher programs in Milwaukee<sup>5</sup> and Cleveland<sup>6</sup> found that students offered vouchers showed no improvement in reading or math over those not in the program.

Private school voucher programs, by design, do not provide equal access for all students. Unlike public schools, private schools accepting vouchers can reject students for a variety of reasons, including that a student has disabilities, is an English learner (EL), is not academically performing at grade-level, identifies as LGBT, practices a different religion, or needs transportation due to large distances between home and school.

A 2016 report conducted by the Government Accountability Office (GAO) found that private school voucher programs allow private schools to deny students admission or grant preference to certain students for many reasons including disciplinary history, academic achievement, and religious affiliation.<sup>7</sup> This is clearly not equal access. In the end, it is the private schools, and not the parents or students, who have the real choice.

Private school vouchers are of virtually no value in rural areas, where there are few, if any private schools, and shrinking populations threaten the very existence of communities' public schools.

Private voucher schools do not adequately serve students with disabilities, often denying admission on the basis of disability, failing to provide needed services and

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<sup>1</sup> Morgan Winsor, [Louisiana's Controversial Voucher Program Harms Poor Students, Lowers Grades, New Study Finds](#), Int'l Bus. Times (Jan. 10, 2016).

<sup>2</sup> R. Joseph Waddington and Mark Berends, Notre Dame's Center for Research and Educational Opportunity, [Impact of the Indiana Choice Scholarship Program: Achievement Effects for Students in Upper Elementary and Middle School](#) 24 (June 2017).

<sup>3</sup> David Figlio & Krzysztof Karbownik, Fordham Institute, [Evaluation of Ohio's EdChoice Scholarship Program: Selection, Competition, and Performance Effects](#) 32 (July 2016).

<sup>4</sup> U.S. Dep't of Educ., [Evaluation of the D.C. Scholarship Program: Impacts After One Year](#) 11 (Apr. 2017).

<sup>5</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). (Overall, there are no significant achievement gains of voucher students compared to public school students. "When similar MPCP and MPS students are matched and tracked over four years, the achievement growth of MPCP students compared to MPS students is higher in reading but similar in math. The MPCP achievement advantage in reading is only conclusive in 2010-11, the year a high-stakes testing policy was added to the MPCP.")

<sup>6</sup> E.g., Jonathan Plucker et al., Center for Evaluation & Education Policy, Univ. of Ind., [Evaluation of the Cleveland Scholarship and Tutoring Program, Technical Report 1998-2004](#) 166 (Feb. 2006).

<sup>7</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](#) 27 (2016).

accommodations (or charging extra for these essentials), and subjecting these students to inappropriate or excessive suspensions or expulsions for behaviors associated with their disabilities, or the school's failure to make needed accommodations.

Private schools are not required to offer English as a Second Language (ESL) or other services for EL students. As a result, these schools are more likely to lack the professionals, training, and curriculum needed to ensure a student becomes proficient in English.

Private school vouchers also do not adequately serve low-income students, whose families cannot afford to pay the difference between the value of a voucher and the actual cost of private education.<sup>8</sup>

Private school vouchers can also exacerbate racial segregation. Studies from across the country find that racial segregation is higher in private schools that accept vouchers than in the public schools.<sup>9</sup>

Private school vouchers also do not work for military-connected students. School districts serving military dependent children, and the students themselves, face unique challenges such as the emotional stress that children and families face when a parent is deployed. These challenges are recognized by public school districts, which offer a complex system of support, including professional development for school counselors to ensure a safe and healthy learning environment. In fact, the Military Interstate Children's Compact, which is an agreement among states and school districts that "addresses key educational transition issues encountered by military families including enrollment, placement, attendance, eligibility, and graduation,"<sup>10</sup> does not extend to nonpublic schools. By using vouchers, these students would forfeit the benefits and services they would otherwise receive in public schools.

## **Charter Schools**

In 2016, NEA adopted a Policy Statement on Charter Schools<sup>11</sup> that articulates our views on charters in light of the drastic evolution away from their original purposes in the early 1990s.

Conceived initially in part as laboratories for innovation meant to improve public education, charter schools have evolved into a low-accountability, low-transparency option fostering weakened local control, privatization, and corporatization of taxpayer-funded education. Charters compete for student enrollment and divert taxpayer funding from traditional public schools.

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<sup>8</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>9</sup> See Halley Potter, [Do Private School Vouchers Pose a Threat to Integration?](#), The Century Foundation (Mar. 2017). See also, Lisa Kaiser, [Still Separate. Still Unequal](#), Shepherd Express (May 14, 2014), Alex Morris, [The Hidden War Against Gay Teens](#), Rolling Stone (Oct. 10, 2013), Jonathan Plucker et al., Center for Evaluation & Education Policy, Univ. of Ind., [Evaluation of the Cleveland Scholarship and Tutoring Program, Technical Report 1998-2004](#)

<sup>10</sup> Military Interstate Children's Compact Commission, About MIC3, <http://mic3.net/pages/About/about.aspx>.

<sup>11</sup> [NEA Policy Statement on Charter Schools](#), adopted July 4, 2016.

Charter schools are even more segregated than traditional public schools. They underserve students with disabilities, particularly those with more severe disabilities, and English learners. Student achievement outcomes are similar to those in traditional public schools. Charters spend less on instruction and more on administrative overhead than public schools. They close more frequently than public schools and such closures disproportionately impact black students and their families.

About thirty-five percent of all charter schools in the U.S. are managed under contract by for-profit or nonprofit chains, often not headquartered in or near the communities where their schools operate. Some of the most visible charter chains with impressive college attendance outcomes have high student attrition rates. They are able to spend substantially more money per pupil than nearby public schools due to large philanthropic contributions supplementing the taxpayer funding they receive, contributions which may or may not endure indefinitely.

The federal Charter Schools Program (CSP) is a major source of funding for creating additional charter schools. It lacks safeguards to ensure public accountability and transparency in charter operations. In addition, since 2010 the ED's management of this program has been criticized in three separate reports by its own Office of the Inspector General (OIG). ED has acknowledged that it cannot account for the funds allocated to open hundreds of charter schools which have not been opened. Yet ED continues to ignore an ESSA requirement (section 9205) that it report on steps it has taken to address findings in the OIG reports.

Michigan has, by far, the highest proportion—roughly four out of five—of charter schools that operate on a for-profit basis of any state in the nation. It has had such major problems with charter accountability that a Republican governor, Republican state legislator, and Democratic mayor of Detroit worked together to press for charter accountability improvements in the state legislature in 2016. According to a *New York Times* story<sup>12</sup>:

- By 2015, a federal review of a grant application for Michigan charter schools [found an “unreasonably high”](#) number of charters among the worst-performing 5 percent of public schools statewide. The number of charters on the list had doubled from 2010 to 2014.
- Between its charter schools and traditional public schools, Detroit had 30,000 more seats than students.
- “People here had so much confidence in choice and choice alone to close the achievement gap,” said Amber Arellano, the executive director of the Education Trust Midwest, which advocates higher academic standards. “Instead, we’re replicating failure.”

The Detroit Free Press reported troubling facts suggesting that the current Secretary of Education intervened in 2016 to play a major role in the defeat of the bipartisan charter accountability initiative in Michigan's legislature.<sup>13</sup> The Secretary's anti-accountability track record provides major grounds for skepticism as to whether this Department of Education has any commitment

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<sup>12</sup> Kate Zernike, “[A Sea of Charter Schools in Detroit Leaves Students Adrift](#)”, New York Times, June 16, 2016.

<sup>13</sup> Stephen Henderson, “[DeVos Family Showers GOP with contributions following DPS Vote](#)”, Detroit Free Press, September 3, 2016.

whatever to accountability for the use of taxpayer funds in any “education choice” initiatives it may support.

### **Other types of “educational choice”**

ED’s proposed definition of “educational choice” would make for-profit schools eligible for federal grants. It would make unaccountable home-schooling eligible for taxpayer funding. It would make fully online, virtual charter schools eligible for federal funding. Even the charter industry lobby has distanced itself from association with the fully online/virtual charter advocacy community because student outcomes in such schools have been utterly dismal.<sup>14</sup>

#### **2. Experience and evidence tell us this proposed priority would be counter-productive and dangerous public policy.**

Market-based arguments for school choice assume that unregulated versions of it, of the sort ED is proposing, will lead to greater competition between schools that will raise student achievement and increase equity. These claims have not been borne out.<sup>15</sup>

To the contrary, actual experience with school choice policies shows that “unless policy makers maintain an explicit commitment to democratic equity, rather than to laissez faire market principles, school choice plans are likely to exacerbate inequality, leading to more segregation and stratification.”<sup>16</sup>

Carefully regulated forms of public school choice, typically utilizing magnet schools, inter- or intra-district public school choice, and developed with community input and a strong civil rights commitment to reducing school segregation, are having broadly positive effects on student achievement and reducing achievement gaps in some areas. Examples include Connecticut (making heavy use of magnet schools) and Wake County, North Carolina (using within-district choice in a public school jurisdiction which includes both Raleigh and its suburbs).

These latter efforts are in keeping with the purposes of the Every Student Succeeds Act:

The purpose of this title is to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps. (PL 114-95, Section 1001.)

ED’s proposal, however, includes no guardrails to ensure public accountability and transparency in the use of taxpayer funds. It does not distinguish among particular types of choice or draw from extensive bodies of research available on forms that have been tried. In addition, it

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<sup>14</sup> “[Virtual Schools in the U.S. 2017](#)”, Alex Molnar (Editor), National Education Policy Center, April 2017.

<sup>15</sup> Chapter 11, “The Impact of School Choice Reforms on Student Achievement”, Gary Miron and Jessica L. Urschel; Chapter 9, “School Choice and Segregation by Race, Ethnicity, Class, and Achievement”, Roslyn Arlin Mickelson, Martha Bottia and Stephanie Southworth; and Chapter 12, “Conclusion”, William J. Mathis and Patricia H. Hinchey, in *Exploring the School Choice Universe: Evidence and Recommendations*, National Education Policy Center, 2012.

<sup>16</sup> “A More Perfect Union”, p. 127, Janelle Scott and Amy Stuart Wells, in *Closing the Opportunity Gap: What America Must Do to Give Every Child an Even Chance*, 2013; *Educational Delusions?: Why Choice Can Deepen Inequality and How to Make Schools Fair*, Gary Orfield and Erica Frankenberg and Associates, 2013.

predictably would lead to further increases in school segregation at a time when school segregation or resegregation has been increasing:

- In May, 2016, the GAO reported<sup>17</sup>:
  - The percentage of K-12 public schools in the United States with students who are poor and are mostly Black or Hispanic is growing and these schools share a number of challenging characteristics. From school years 2000-01 to 2013-14 (the most recent data available), the percentage of all K-12 public schools that had high percentages of poor and Black or Hispanic students grew from 9 to 16 percent, according to GAO's analysis of data from the Department of Education (Education). These schools were the most racially and economically concentrated: 75 to 100 percent of the students were Black or Hispanic and eligible for free or reduced-price lunch—a commonly used indicator of poverty. GAO's analysis of Education data also found that compared with other schools, these schools offered disproportionately fewer math, science, and college preparatory courses and had disproportionately higher rates of students who were held back in 9th grade, suspended or expelled.
- In a June, 2017 report, “Fractured: The Breakdown of America’s School Districts,” the nonprofit edbuild reports<sup>18</sup>:
  - Alabama makes it particularly easy for small towns to secede from a larger school district, but 30 states have processes codified in state law that allow for secession, some more permissive than others...71 communities have attempted to secede from their school districts since 2000—a number that continues to grow. Of these, 47 communities have been successful at splitting from their districts, and another nine secessions are ongoing.
  - The United States District Court for the Northern District of Alabama recently issued a ruling—currently under stay until repeals are resolved—that would allow a primarily white, middle-class section of Jefferson County to secede from its larger school district. The action would further fracture the Birmingham area, where seven other towns have withdrawn to form their own districts since the 1950s, leaving Jefferson County School District both poorer and less racially diverse. The secessions have created some of the most socioeconomically segregating school district borders in the country, and five of these have occurred despite a federal desegregation order that has been in place since 1971. (p. 3)

Our society is becoming increasingly diverse. Are we building for a future where we are investing in the productive potential of all of our people? Or will we continue to passively accept a situation where large numbers of young people are relegated to inferior and unacceptable opportunities resulting from their isolation in high-poverty communities with under-resourced schools and other public amenities? Are we fostering conditions that will help

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<sup>17</sup> [“Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination”](#), U.S. Government Accountability Office, GAO-16-345, May 17, 2016.

<sup>18</sup> [“Fractured: The Breakdown of America’s School Districts”](#), edbuild, June 2017.



individuals and society as a whole to benefit from our diversity? Or will we shrink from this challenge and retreat behind physical and psychological walls of fear and isolation?

There has been a predominant tendency in recent decades to dismiss public policy attention to school and residential segregation as passé, reflective of an earlier era in our history and of little or no relevance to today's challenges. We disagree. We also note that support for integration is not limited to any one part of the political spectrum, suggesting possibilities for unconventional alliances to move such efforts forward. To cite two examples:

- The aforementioned nonprofit edbuild, whose Web page states its view that “current education funding systems are outdated, arbitrary, and segregating,” is funded by, among other groups, the Walton Family Foundation<sup>19</sup>
- It was conservative U.S. Supreme Court Justice Anthony Kennedy who wrote, in the 2007 *Parents Involved in Community Schools v. Seattle School District No.1* decision:

This Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children. A compelling interest exists in avoiding racial isolation, an interest that a school district, in its discretion and expertise, may choose to pursue. Likewise, a school district may consider it a compelling interest to achieve a diverse student population. Race may be one component of that diversity, but other demographic factors, plus special talents and needs, should also be considered.

Unfortunately, actions by ED in support of its version of choice move our communities and our country towards greater, not less, school segregation:

- It discontinued a \$12 million grant program for which funding had already been made available by Congress, the “Opening Doors, Expanding Opportunities” program. Twenty-six school districts had expressed an intent to apply for funding under this initiative, which provided assistance to districts voluntarily seeking to devise ways to increase socioeconomic diversity in their schools.
- These proposed grant priorities would eliminate two existing school diversity supplemental priorities for departmental grants without incorporating school diversity into the current proposal. These are priority 12, Promoting Diversity, established on December 10, 2014 (Vol. 79, No. 237 Federal Register, p. 73452) and a supplemental priority for Increasing Socioeconomic Diversity in Schools announced on September 14, 2016 (Federal Register Vol. 81, No. 178, p. 63100).
- The Administration's FY 2018 budget proposed major increases for two forms of school choice—private school vouchers (\$250 million) and charter schools—which increase school segregation. It proposed close to level funding for a form of school choice—magnet schools—that reduces school segregation.

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<sup>19</sup> [list of partners and donors](#), edbuild website

Taken together, these actions suggest Departmental hostility to any form of federal support for commitments by forward-thinking school districts and communities to make their diversity work to their advantage, combined with apparent indifference or a lack of awareness of the segregating consequences of its policy proposals.

**3. This proposed priority seeks to circumvent Congressional policy and funding decisions made in the Every Student Succeeds Act and recent appropriations activity.**

Congress rejected federal funding for private school vouchers in the Every Student Succeeds Act. ESSA reflected a clear decision by Congress to devolve decision-making authority for local school improvement decisions from the federal to state and especially local levels, as reflected in the following language in Senate Health, Education, Labor and Pensions Committee report 114-231 for this legislation:

[ESSA] builds on the strengths and weaknesses of previous and unsuccessful legislative proposals considered by this committee over the past 6 years. In particular, it includes bipartisan consensus to provide more flexibility and certainty to policymakers and educators around the country that are closest to our children, while maintaining the important focus on serving disadvantaged children and closing persistent achievement gaps. (p. 4)

School districts will be responsible for designing evidence-based interventions and supports for low performing schools, with technical assistance from the States, and the Federal Government is prohibited from mandating, prescribing, or defining the specific strategies used for school intervention and support. (p. 4)

Congress rejected an enormous potential expansion of funding for charter schools when it declined to fund the Administration's \$1 billion FY 2018 Furthering Options for Children to Unlock Success (FOCUS) grants budget request.

In report 115-150 on its FY 2018 Departments of Labor, Health and Human Services, Education, and Related Agencies appropriations bill S. 1771, the Senate Appropriations Committee restated and reinforced Congressional intent as reflected in ESSA. Through the Education and Innovation Research (EIR) program, the Administration proposed to allocate \$250 million in FY 2018 for private school vouchers. Congress again rejected taxpayer funding for private school vouchers. Writing about its EIR program funding decision, the Committee in its report wrote:

...the Committee directs the Department to ensure that funds are used for projects in a range of topic areas, based on the needs of local communities as determined by field initiated proposals, and that funds are not focused or designated for any particular intervention. Further, the Committee recommendation does not include new bill language requested under this program and believes changes proposed to the recently reauthorized ESEA should be made as needed through legislation considered by the authorizing Committees of Congress. (p. 170)

With this proposed priority, ED seeks to undermine Congress' intent in ESSA to bar it from focusing or designating funds for any particular interventions. Some members of Congress



criticized the preceding Administration's Department of Education for what they viewed as intrusive, heavy-handed efforts to impose ED's policy priorities on states and localities. There is no basis for Congress to view this proposed priority differently.

**Proposed Priority 2: Promoting innovation and efficiency, streamlining education with an increased focus on improving student outcomes, and providing increased value to students and taxpayers**

NEA recommends that the following language be added to Priority 2(c):

Applicants must show that any efforts to reduce compliance burden will not reduce compliance or proof of compliance with laws and regulations protecting equitable opportunity for students or laws and regulations protecting civil rights.

NEA believes that any reduction on reducing compliance burdens should be balanced by careful consideration of the original statutory and regulatory purpose of current compliance guidelines, including in the area of civil rights.

**Proposed Priority 6: Promoting STEM with a particular focus on computer science**

STEM is an existing supplemental priority. It is important to promote attention to this area. Priority 6(i) ["utilizing technology to provide access to education choice (as defined in this notice)"] as written is far too broad, however. It would open the door, for example, to public funding of fully virtual or online schools, for which the secretary expresses continued support despite disastrous student outcomes in these schools. This part of the proposed STEM priority should be withdrawn in the final version.

**Proposed Priority 8: Promoting effective instruction in classrooms and schools.**

NEA believes that Proposed Priority 8(d) should be changed to read as follows:

Developing or implementing innovative staffing or compensation models, developed through collective bargaining where it exists or in collaboration with teachers and their associations where it does not, to attract effective educators because teacher input is critical for compensation and staffing systems to be meaningful and credible. When school districts and local teacher associations work together on these issues, the results are meaningful and sustainable solutions.

We recommend this change because even in states with limited or no bargaining, school districts and teacher associations have collaborated successfully on a number of issues to improve student learning. The school districts understand that to attract and retain the best educators, teachers must be respected as professionals, be paid a professional salary, and have meaningful input into improving students' learning environment.

NEA believes that Proposed Priority 8(c) should also be changed to read as follows:

Promoting innovative strategies, developed through collective bargaining where it exists or in collaboration with teachers and their associations where it does not, to increase the number of students who have access to effective teachers or school leaders in one or more of the following: (i) schools generally; (ii) schools that are located in communities served by rural local educational agencies; or (iii) schools with a large proportion of low-income students.

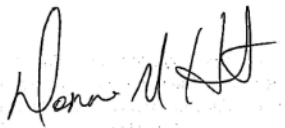
We recommend this change because even in states with limited or no bargaining, school districts and teacher associations have collaborated successfully on a number of issues to improve student learning. The districts understand that to attract and retain the best educators, teachers must be respected as professionals, be paid a professional salary, and have meaningful input into improving students' learning environment.

**Proposed Priority 11—Ensuring that service members, veterans, and their families have access to high-quality educational choices**

NEA strongly supports veterans, service members, and their families. Making opportunities presently available to veterans and service members and their family members easier to use, and communicating their benefits more clearly, is of course salutary. However, no other specific details are provided as to what this proposed priority contemplates. As noted in comments in response to proposed Priority 1 above, public school districts and states offer the Military Interstate Children's Compact, an agreement that addresses key educational transition issues encountered by military families including enrollment, placement, attendance, eligibility, and graduation. The Compact does not extend to students attending nonpublic schools. If ED were to attempt to steer children of veterans and service members to use vouchers, including by not communicating the benefits of this Compact clearly, these students would forfeit the benefits and services they would otherwise receive in public schools.

NEA submits these comments in accordance with the legal and regulatory opportunities for public comment. If we can provide any additional information or answer any questions, please do not hesitate to contact NEA senior policy analyst Bob Tate at [btate@nea](mailto:btate@nea).

Sincerely,



Donna M. Harris-Aikens, Director  
Education Policy and Practice Department