

November 16, 2022

**VIA ELECTRONIC MAIL**

U.S. Department of Education  
Office of the Executive Secretariat  
FOIA Service Center  
400 Maryland Ave. SW, LBJ 7W106A  
Washington, D.C. 20202-4536  
EDFOIAManager@ed.gov  
ATTN: FOIA Public Liaison

**Re: FOIA REQUEST: External Communications of OPEPD Special Assistant Kayla Patrick**  
(DFI FOIA No. 100-33-22)

Dear FOIA Public Liaison:

The Defense of Freedom Institute for Policy Studies, Inc. (“DFI”) is a 501(c)(3) nonprofit, nonpartisan organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting civil and constitutional rights at schools and in the workplace. DFI includes former U.S. Department of Education (“Department” or “ED”) and other federal agency officials who are experts in education law and policy and the operation of the Department. For the benefit of the public, DFI’s mission includes obtaining records related to the consideration and implementation of policies imposed by the federal government and its officials on the American people.

One of the Department’s critical policy-making components is the Office of Planning, Evaluation and Policy Development (“OPEPD”), where the Assistant Secretary “serves as the principal adviser to the Secretary on all matters relating to policy development, implementation, evaluation, and review, budget proposals and processes, data strategy and governance, and student privacy.”<sup>1</sup> OPEPD includes the Grants Policy Office (“GPO”), which “works with offices across the Department to ensure alignment with the Secretary’s policy priorities . . .”<sup>2</sup> and the Office of Budget Service (“BS”) which has the “lead responsibility” for developing and implementing the Department’s budget, formulating budget and related legislative policy proposals for Department programs, and presenting the Department’s budget and policy proposals to the public and to Congress.<sup>3</sup>

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<sup>1</sup> See <https://www2.ed.gov/about/offices/or/fs/oepd/intro.html>.

<sup>2</sup> See <https://www2.ed.gov/about/offices/list/oepd/gpo/index.html>.

<sup>3</sup> See <https://www2.ed.gov/about/offices/or/fs/oepd/intro.html>.



In short, OPEPD personnel play a central role in the Department’s ongoing policy and budget proposals and its significant grantmaking responsibilities<sup>4</sup> which affect nearly all State Educational Agencies (“SEAs”), Local Educational Agencies (“LEAs”), Institutions of Higher Education (“IHEs”), and other grant applicants and recipients.

One of the Department’s key OPEPD personnel is Kayla Patrick, a political appointee who now serves as a Special Assistant in that office.<sup>5</sup> Patrick, a graduate of Columbia University (M.A.) and Wellesley College (B.A.)<sup>6</sup> who served in multiple roles in the Biden-Harris campaign, publicly commented in 2021 that “school discipline is a symptom of a racist and punitive system that often fails to see children as children” and said that “Black students are more likely to be offended, affected by that [racist and punitive system].”<sup>7</sup> Patrick alleged that “Black girls are more likely to be disciplined . . . simply for being Black” and blamed the “whiteness” of teachers for “racism [being] baked into school discipline and dress code policies.”<sup>8</sup>

Ms. Patrick’s incendiary views concerning the causal link between white educators and the treatment of black students pre-dated her role at the Department. In August 2020, while employed at The Education Trust,<sup>9</sup> Patrick co-authored a “guide” entitled “And They Cared: How to Create Better, Safer Learning Environments for Girls of Color”<sup>10</sup> (“Guide”), sponsored by The Education Trust and The National Women’s Law Center,<sup>11</sup> where Patrick had also previously worked.<sup>12</sup> Patrick’s Guide blamed “400 years of systemic anti-Blackness [] folded into our nation’s fabric” and recommended the solution of “restorative justice” such as “talking circles, also known as restorative circles or peace circles” to address “school-based conflicts and violence” – at least for “Girls of Color.”<sup>13</sup> The Guide hailed the “beginning of a historic public reckoning on racism in America” and the opportunity it presented to make radically different policy and financial decisions in America’s schools.<sup>14</sup>

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<sup>4</sup> See <https://www.usaspending.gov/agency/department-of-education?fy=2022>.

<sup>5</sup> See <https://www2.ed.gov/news/staff/appointees.html#p>.

<sup>6</sup> *Id.*

<sup>7</sup> Hannah Grossman, “Biden Department of Education official claims ‘school discipline’ is ‘racist,’ blames ‘whiteness,’” FOX NEWS (Nov. 11, 2022),

<https://www.foxnews.com/media/biden-department-education-official-claims-school-discipline-racist-blames-whiteness>.

<sup>8</sup> *Id.*

<sup>9</sup> See <https://edtrust.org/who-we-are/>.

<sup>10</sup> See <https://edtrust.org/wp-content/uploads/2014/09/And-they-cared-How-to-create-better-safer-learning-environments-for-girls-of-color-Aug-2020.pdf> (“Guide”).

<sup>11</sup> See <https://nwlc.org/>.

<sup>12</sup> See <https://www2.ed.gov/news/staff/appointees.html#p>.

<sup>13</sup> Kayla Patrick, Adaku Onyeka-Crawford, Nancy Duchesneau, “And They Cared: How to Create Better, Safer Learning Environments for Girls of Color,” THE EDUCATION TRUST (Aug. 20, 2020), <https://edtrust.org/resource/and-they-cared-how-to-create-better-safer-learning-environments-for-girls-of-color/>.

<sup>14</sup> See “Guide,” p. 1.



Ms. Patrick’s “Guide” included a “Checklist” that recommends that school districts should “make discipline data publicly available in a way that breaks out race [and] gender (i.e., data shows percentage of Black girls suspended)” and that districts “celebrate and encourage cultural diversity in meaningful ways” including professional development to “reduc[e] implicit bias”<sup>15</sup> by white educators. The Guide even calls for schools to enter into MOUs (legally binding memoranda of understanding) with local police departments that “prohibit[] educators from calling the police for minor/subjective offenses,” to “prohibit[] the police from engaging with students for typical youth behavior,” and that “in instances of sexual assault, schools will not contact law enforcement without the consent of the alleged victim, unless otherwise required by law[.]”<sup>16</sup> The Guide recommends implementation of these and other action items “so decision-makers can assess what changes they can make to create positive school climates at the school, district, or state level.”<sup>17</sup>

Ms. Patrick’s strident views blaming white educators for the school-related behavioral difficulties of “girls of color” may be impacting many of the Department’s policies and budgetary decisions. For example, on April 14, 2022, the Department announced its “2022 Agency Equity Plan related to Executive Order 13985” (“AEP”) as its master plan for “provid[ing] the resources and tools to help [educators] meet students’ *holistic* needs, ranging from their academic growth to their social and emotional development, and their mental health.”<sup>18</sup> The plan ambitiously seeks to “guarantee that [ED’s] transformative changes last long beyond the life of Executive Order 13985” by using ED’s “processes, policies, strategies, and culture to ensure equity is the foundation upon which all decisions and protocols rest . . . .”<sup>19</sup>

Executive Order 13985 (“EO”), issued by President Joe Biden on January 20, 2021, decreed that federal agencies advance “an ambitious whole-of-government equity agenda,” while defining “equity” as the “consistent and systematic fair, just, and impartial treatment of all individuals” to include “underserved communities . . . denied such treatment . . . .”<sup>20</sup> Having designated the potential beneficiaries of his equity EO by race, religious background, sexual identity, disability, geography, and socioeconomic background, President Biden directed federal agencies to enact his equity-based agenda. The EO and AEP appear to align very well with Patrick’s overtly race-conscious views and policy proposals.

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<sup>15</sup> See “Guide,” p. 18-20.

<sup>16</sup> See “Guide,” p. 20.

<sup>17</sup> See “Guide,” p. 1.

<sup>18</sup> See <https://www2.ed.gov/documents/equity/2022-equity-plan.pdf> (emphasis added) (“AEP”).

<sup>19</sup> See AEP, p.2.

<sup>20</sup> Executive Order 13985 declared that particular communities in America had been denied fair, just, and impartial treatment, to include “black, Latino, and Indigenous and Native American persons, Asian American and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.” See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.



The AEP appears designed to further divide Americans by race, ethnicity, religion, and sexual identity, among other socioeconomic identifiers. By design, the AEP injects these qualifiers into the Department’s programmatic activities for every conceivable policy and, in so doing, reserves for itself the raw power to use “equity” to award grants and other funding to States and local governments (among other entities) that most closely adhere to the social-justice criteria favored by the Department’s current political leadership. The AEP mirrors Patrick’s views that race, among other criteria, should be central to the Department’s policy and budgetary considerations, including for the award of grants to SEAs, LEAs, and other traditional recipients of Departmental aid.

Similarly, in its recently announced “Equity Assistance Center” (“EAC”) grants,<sup>21</sup> the Department awarded millions of taxpayer dollars originally intended to render technical assistance for continued desegregation efforts in public schools to organizations with views on race that appear indistinguishable from Patrick’s views. One EAC grantee was the Great Lakes Equity Center (“GLEC”),<sup>22</sup> part of Indiana University, which provides a variety of equity resource tools, including “Interrupting Microaggressions” and “Gender Identity: Choose Your Own Equitable Adventure.”<sup>23</sup> In February 2017, GLEC published a 101-page “Assessing Bias in Standards and Curricular Materials,” which included tools for the study of the “perspectives, histories, and contributions of non-White, non-male, non-dis/abled, or non-cisgender people [who] are generally minimalized, misrepresented or often omitted altogether.”<sup>24</sup>

GLEC’s “Anti-Racism Resources” provides unvarnished racist vitriol in its “Center Statement” which admonishes teachers based on their racial backgrounds:

“For those are who are white (non-disabled, Christian, non-LGBTQIA+, English-only speaking, US born, and otherwise privileged) educators/scholars, we urge you to focus your work on dismantling the racism and ableism, and other oppressions *you* engage to maintain this systemic trauma for our Youth of Color and intersectionally-marginalized youth, alongside your community of white educators and scholars.

Position yourselves as vulnerable and work toward the *redistribution of your own power and resources, not the deficit-based fixing of children* who are already brilliant and beautiful exactly as they show up in our schools, classrooms, and online spaces each and every day.”<sup>25</sup>

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<sup>21</sup> See <https://oese.ed.gov/2022-grant-award/>.

<sup>22</sup> In 2016 the Department awarded Indiana University (“IU”) nearly \$1.6 million in an “Equity Assistance Center” grant for GLEC (in addition to nearly \$800,000 previously awarded by the Department). See <https://www2.ed.gov/programs/equitycenters/16awards.html>. In 2022, the Department awarded IU more than \$1.6 million for GLEC. See <https://oese.ed.gov/2022-grant-award/>.

<sup>23</sup> See <https://greatlakesequity.org/resources>.

<sup>24</sup> See <https://greatlakesequity.org/resource/assessing-bias-standards-and-curricular-materials>.

<sup>25</sup> See <https://greatlakesequity.org/anti-racism-resources>.



GLEC's Center Statement then addresses its non-white educators:

“For our Black, Indigenous, People of Color+ partners, including families and students, we will continue work to center your experiences, your leadership, your wisdom, your voices, and all other forms of your expression. We will work to create more healing and loving spaces for you in particular as we move forward in the immediate and long-term future.”<sup>26</sup>

Another successful 2022 (and 2016) grantee was the Mid-Atlantic Equity Consortium, (“MAEC”) which received over \$1.5 million in an Equity Assistance Center grant.<sup>27</sup> MAEC established the “Center for Education Equity” (CEE), which claims to “achieve educational equity” by providing training in “equity-centered capacity building,” “collective impact,” and “equity-centered socioeconomic integration.”<sup>28</sup>

CEE's equity materials for educators include a blog entitled “Bold Classroom Conversations: Let's Talk About Racism!”, explaining that *not* discussing racism with students is not an option, that there isn't a better place to discuss racism than in the classroom, and that although “parental pushback is a powerful force,” it must be minimized by “making sure that any discussions on racism tie back to the curriculum. After all, how can they [parents] argue with that? Ok . . . they still find a way, but you get my point!”<sup>29</sup>

The overtly racist “equity” assistance educator materials provided by GLEC and CEE clearly reflect the expressed views and policy proposals long advocated by Patrick. These policies appear to DFI to be in direct violation of Title IV and Title VI of the Civil Rights Act of 1964 which respectively provide for the desegregation of public schools and prohibits discrimination on the basis of race, color, or national origin in federally funded programs.<sup>30</sup>

In light of Ms. Patrick's clearly stated and forcefully expressed views regarding the alleged racism of white educators towards black students and her important position within the Department, DFI is concerned about the degree to which Ms. Patrick, through her position, has facilitated and accommodated the policy and budgetary impact of similar views by outside organizations and individuals.

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<sup>26</sup> *Id.*

<sup>27</sup> See <https://www2.ed.gov/programs/equitycenters/16awards.html>. Before receiving its 2016 grant, MAEC had already received approximately \$2.3 million in Departmental awards.

<sup>28</sup> See <https://cee-maec.org/>.

<sup>29</sup> See <https://cee-maec.org/lets-talk-about-racism/>.

<sup>30</sup> 42 U.S.C. § 2000d, et seq.



Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of ED, 34 C.F.R. Part 5 (“Availability of Information to the Public”), DFI makes the following requests for provision of records within your possession and/or control:

### **Requested Records**

DFI requests that ED produce the following records within **twenty (20) business days** as required by statute:

1. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation regarding the Department’s Agency Equity Plan (discussed *supra*), Executive Order 13985, and the award of any and all Departmental grants including but not limited to the Department’s grants for Equity Assistance Centers, between Special Assistant Kayla Patrick (“Patrick”) and any individual(s) in the Executive Office of the President, to include **anyone using an email address ending in eop.gov**, from January 20, 2021, through the date the search is conducted.
2. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation regarding the Department’s Agency Equity Plan (discussed *supra*), Executive Order 13985, and the award of any and all Departmental grants, including but not limited to the Department’s grants for Equity Assistance Centers, (discussed *supra*), between Special Assistant Kayla Patrick and any Member of Congress or Congressional staff, to include **anyone using an email address ending in mail.house.gov or senate.gov**, from January 20, 2021, through the date the search is conducted.
3. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation between Special Assistant Kayla Patrick and non-governmental third parties (identified *infra*) from January 20, 2021, through the date the search is conducted.

### **Non-governmental Third Parties**

The search for records described in Item 3 should include searches for communications and correspondence with the following non-governmental third parties (to include any email addresses from anyone using the email address listed):

- a. The Education Trust (edtrust.org)
- b. National Women’s Law Center (nwlc.org)
- c. Great Lakes Equity Center (greatlakesequity.org)
- d. Mid-Atlantic Equity Consortium (maec.org)
- e. Southern Education Foundation (southerneducation.org)
- f. WestEd (wested.org)
- g. National Education Association EdJustice (neaedjustice.org)



- h. National Education Association (nea.org)
- i. National Action Network (nationalactionnetwork.net)
- j. Center for Racial Justice in Education (centerracialjustice.org)
- k. Impact Justice (impactjustice.org)
- l. Gates Foundation (gatesfoundation.org)
- m. Chan Zuckerberg Institute (chanzuckerberg.com)
- n. NAACP (naacp.org)
- o. National Urban League (nul.org)
- p. Advancement Project (advancementproject.org)
- q. Brookings Institution (brookings.edu)
- r. BLM (blacklivesmatter.com)
- s. Learning Policy Institute (learningpolicyinstitute.org)
- t. Child Trends (childtrends.org)

## Definitions

Absent contrary statutory directives, words and phrases contained herein should be accorded their usual, plain, and ordinary meaning. Please note the following statutory definition:

**“Records”** are defined at 44 U.S.C. § 3301(a)(1-2) as including “all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them” and further “includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form, such as emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.

## Identification and Production of the Requested Records

FOIA imposes a burden on ED, as a covered agency under 5 U.S.C. § 551(1), to timely disclose requested agency records to the requestor<sup>31</sup> if ED (1) created or obtained the requested materials, and, (2) is “in control of the requested materials at the time the FOIA request [was] made.”<sup>32</sup> Upon request, ED must “promptly” make the requested records available to the requester.<sup>33</sup> Notably, covered agency records include materials provided to ED by both private and governmental

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<sup>31</sup> FOIA requires the disclosure of nonexempt agency records to any person, which includes an individual, partnership, corporation, association, or public or private organization other than an agency. 5 U.S.C. § 551(2).

<sup>32</sup> *Department of Justice (DOJ) v. Tax Analysts*, 492 U.S. 136 at 144-45 (1989).

<sup>33</sup> 5 U.S.C. § 552(a)(3)(A).



organizations.<sup>34</sup> Upon receipt of a FOIA request that “reasonably” describes the records sought and is in compliance with ED’s published rules regarding the time, place, any fees, and procedures to be followed,<sup>35</sup> ED must conduct a search calculated to find responsive records in ED’s control at the time of the request.<sup>36</sup> In addition, the records produced by ED are required to be provided in “any form or format requested . . . if the record is readily reproducible by the agency in that form or format.”<sup>37</sup>

Upon receipt of this request, ED has **twenty business days** to “determine . . . whether to comply with [the] request” and “shall immediately notify” the requester of its determination and the reasons therefor,” the right to seek assistance from the agency’s FOIA public liaison, and the requester’s right to appeal any “adverse determination” by ED.<sup>38</sup>

Consistent with FOIA guidelines, DFI requests the following regarding the provision of the requested records:

- ED should immediately act to protect and preserve all records potentially responsive to this request, notifying any and all responsible officials of this preservation request and verifying full compliance with the preservation request. This matter may be subject to litigation, making the immediate initiation of a litigation hold on the requested materials necessary.
- ED should search all record systems that may contain responsive records, promptly consulting with its information technology (IT) officials to ensure the completeness of the records search by using the full range of ED’s IT capabilities to conduct the search. To constitute an adequate search for responsive records, ED should not rely solely on a search of a likely custodian’s files by the custodian or representations by that likely custodian, but should conduct the search with applicable IT search tools enabling a full search of relevant agency records, including archived records, without reliance on a likely custodian’s possible deletion or modification of responsive records.
- ED should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding ED’s business operations. Responsive records include official business conducted on unofficial systems which may be stored outside of official recording systems and are subject to FOIA. ED should directly inquire, as part of its search, if likely custodians have conducted any such official business on unofficial systems and should promptly and fully acquire and preserve those records as ED’s official

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<sup>34</sup> *Id.* at 144.

<sup>35</sup> 5 U.S.C. § 552(a)(3)(A)(i).

<sup>36</sup> *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004).

<sup>37</sup> 5 U.S.C. § 552(a)(3)(B).

<sup>38</sup> 5 U.S.C. § 552(a)(6)(A)(i).



records. Such unofficial systems include, but are not limited to, governmental business conducted by employees using personal emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack. Failure to identify and produce records responsive to this request from such unofficial systems would constitute a knowing concealment by ED calculated to deflect its compliance with FOIA's requirements.

- ED should timely provide entire records responsive to this request, broadly construing what information may constitute a “record” and avoiding unnecessarily omitting portions of potentially responsive records as they may provide important context for the requested records (*e.g.*, if a particular email is clearly responsive to this request, the response to the request should include all other emails forming the email chain, to include any attachments accompanying the emails).
- ED should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.
- If ED determines that any portions of otherwise responsive records are statutorily exempt from disclosure, DFI requests that ED disclose reasonably segregable portions of the records.
- For any responsive records withheld in whole or part by ED, ED should provide a clear and precise enumeration of those records in index form presented with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA”<sup>39</sup> and provide a sufficiently detailed justification and rationale for each non-disclosure and the statutory exemption upon which the non-disclosure relies.
- Please provide responsive records in electronic format by email, native format by mail, or PDF or TIH format on a USB drive. If it helps speed production and eases ED's administrative burden, DFI welcomes provision of the records on a rolling basis. Responsive records sent by mail should be addressed to the Defense of Freedom Institute for Policy Studies, 1455 Pennsylvania Avenue NW, Suite 400, Washington, D.C. 20004.

### **Fee Waiver Request**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.33 and 34 C.F.R. § 5.32(b)(1)(ii), DFI requests a waiver of all fees associated with this FOIA request for agency records.

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<sup>39</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).



### **Disclosure of the requested records is in the public interest.**

Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and because disclosure of the information contained within the requested records is not primarily in the commercial interests of DFI.

The disclosed materials are likely to contribute significant information to the public's understanding of the Department's race conscious policies and related grantmaking and budgetary matters, involving important ED policy matters that are highly relevant to the interests of American students, families, teachers, and taxpayers. Disclosure of the requested materials will illuminate ED's policies and planning (*e.g.*, rulemaking and enforcement decisions). Further, the requested information does not otherwise appear to be in the public domain (in duplicative or substantially identical form).

Provision of the requested records will not commercially benefit DFI (a nonprofit, nonpartisan organization interested in the transparency of ED operations and governance), but will benefit the general public and other groups and entities with non-commercial interests in ED's operations and governance.

DFI will review and analyze the requested records and make the records and analyses available to the general public and other interested groups through publication on DFI's website and social media platforms such as Facebook and Twitter (distribution functions it has already demonstrated a capacity to provide since its formation in September 2021, including a detailed news story on ED policies widely distributed by one of the nation's largest news providers in February 2022, a March 2022 analysis of DOJ policies distributed by a leading news magazine, and multiple widely-published analyses and news stories involving recent ED policy announcements regarding the student loan repayment program and Title IX proposed rulemaking. DFI personnel also frequently offer commentary and analyses on radio and television news programs and in various public forums.

Federal law makes clear that when the disclosure is in the public interest and the information contained within the disclosed records is not primarily in the commercial interests of the requester (here, DFI), statutory fee waiver is appropriate.

### **DFI is a representative of the news media.**

In addition to the fee waiver request based upon the public interest, DFI also requests a fee waiver on the basis that DFI is a **representative of the news media**, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.32(b)(1)(ii).

FOIA (as amended) provides that a representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn



the raw materials into a distinct work, and distributes that to an audience.”<sup>40</sup> DFI provides exactly this service to the general public and other audiences with an interest in those materials and analyses. Upon receipt of the requested materials from ED, DFI will review and analyze those materials and will extract and otherwise distill particularly useful information from those materials for the benefit of the general public and other interested audiences.

DFI will provide its analyses to the general public and other interested audiences through publication on DFI’s website and social media platforms such as Facebook and Twitter (distribution functions it has already demonstrated a capacity to provide since its formation in September 2021, including a detailed news story on ED policies widely distributed by one of the nation’s largest news providers in February 2022 and more recently, a March 2022 analysis of DOJ policies, and several more recent published and widely distributed news stories regarding DFI’s analyses of ED’s Title IX rulemaking and student loan debt cancellation program, among other news stories. DFI personnel also frequently appear as guests or panelists to offer commentary and analyses on radio and television news programs and in various other public forums.

As a qualified non-commercial public education and news media requester with demonstrated ability to review and analyze publicly-available information and to provide insight regarding that information, DFI is thus entitled to a fee waiver under FOIA as a representative of the news media.

## **Conclusion**

The subject of this request regards the communications and correspondence of a particular Departmental official regarding overtly racial viewpoints, policies, and budgetary and grantmaking impacts that are highly relevant to the interests of American students, families, teachers, and taxpayers. Provision of the requested records will meaningfully inform the general public about significant developments in wide-ranging ED policies, including budgets and grant awards, which affect millions of American students, families, and taxpayers. These are significant policy issues with tremendous impact on the general public and worthy of transparency in service of the public’s right to know.

DFI is an independent 501(c)(3) nonprofit organization without a commercial purpose primarily engaged in the dissemination of information about government policies to the public. DFI is engaged in the collection, analysis, and dissemination of information to educate the public about government policies that impact the civil and constitutional rights of American families, students, entrepreneurs, and workers. DFI actively publishes information and related analyses on its public website and promotes access to that information and analyses on social media platforms, including but not limited to distribution via Facebook and Twitter.

DFI appreciates ED’s prompt attention to this request for records pursuant to FOIA, which will provide important information to the American people regarding the formation and execution of

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<sup>40</sup> See *Cause of Action v. FTC*, 799 F.3d 1108, at 1115-16 (D.C. Cir. 2015).



ED's policies and related budgets and grantmaking, which are of tremendous interest to students, families, and taxpayers.

Please contact me immediately if DFI's request for a fee waiver is not granted in full.

If you have any questions or I can further clarify DFI's request, please contact me at your earliest convenience at [paul.moore@dfipolicy.org](mailto:paul.moore@dfipolicy.org).

Sincerely yours,

*/s/ Paul R. Moore*

Paul R. Moore, Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.