

December 15, 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: Records of the Office for Civil Rights' Internal Decisions and External Communications with Oak Park and River Forest School District 200 Officials**  
(DFI FOIA No. 100-37-22)

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.

The Department’s Office for Civil Rights (“OCR”) describes its mission as “enforc[ing] . . . Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education.”<sup>1</sup> OCR has twelve regional offices, including Region V, based in Chicago, IL.<sup>2</sup>

DFI believes OCR has a critically important responsibility to the American people to ensure equality of opportunity for all students and teachers, without regard for the racial or ethnic background of any student, teacher, or other school employee.

**Background of Oak Park and Forest River School District 200’s Racially Discriminatory Policies**

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<sup>1</sup> See <https://www2.ed.gov/about/offices/list/ocr/aboutocr.html>.

<sup>2</sup> See <https://www2.ed.gov/about/offices/list/ocr/addresses.html>.



Since 2019, the Oak Park and River Forest School District 200 (“District”), in Oak Park, Illinois, has announced and adopted explicitly race-based policies in pursuit of its wide-ranging “racial equity” program to “identify and remove unconscious biases and system-wide barriers that inhibit success for all students.”<sup>3</sup>

For example, at the District’s January 27, 2022, Board of Education (“Board”) meeting, Dr. Patrick Hardy, then OPRF’s Executive Director of Equity and Student Success presented a strategic plan, along with supporting documentation, to fulfill the Board’s policy mandates and the District’s public commitments to the principle of “racial equity.”<sup>4</sup> One of the documents, labeled an “Action Plan,” envisions that the District “will become a model school for racial equity within four years.”<sup>5</sup> To achieve this vision, the action plan calls for “building organizational capacity for engaging in racial equity work” through the following four projects: “Strengthen racial equity professional development programming”; “Establish an Office of Equity and Student Success Advisory Team”; “Develop and implement a resource allocation review process in alignment with board policy 7:12”; and “Implement comprehensive administrative equity procedures and analysis throughout the organization.”<sup>6</sup>

To carry out these race-based policies, the District created what it termed a “Racial Equity Analysis Tool” (“REAT”) to filter all school and district decisions through a race-centered process. In a document posted to its website, the District explained the purpose of REAT as follows:

By using [REAT], District 200 will provide a common language and protocol to evaluate *all policies, programs, practices, and significant decisions*. The purpose of the tool is to mitigate and eliminate the presence of racial inequity, implicit bias, and other unintended consequences of decision making. [REAT] is utilized to consistently, deliberately, and thoroughly apply a vigorous equity lens to the decision making process in order to remove structural barriers that impede access

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<sup>3</sup> Oak Park and River Forest High School, Racial Equity at OPRF, <https://www.oprfhs.org/racial-equity-program/index#:~:text=One%2520of%2520the%2520unique%2520aspects,and%25203%2520percent%2520as%2520Asian> (hereinafter “Racial Equity at OPRF”) (last visited May 31, 2022). Oak Park and River Forest High School is the only school in District 200. See Illinois State Board of Education, Illinois Report Card 2020–2021, Oak Park – River Forest SD 200, <https://www.illinoisreportcard.com/district.aspx?districtid=06016200013&source=schoolsindistrict&source2=Schools> (last visited May 31, 2022).

<sup>4</sup> Oak Park and River Forest High School, Agenda Item Details: Jan 27, 2022 – Regular Board of Education Meeting (Virtual), <https://go.boarddocs.com/il/oprfhs/Board.nsf/vpublic?open>.

<sup>5</sup> Oak Park and River Forest High School, Office of Equity and Student Success: Action Plan, at 1 (hereinafter “OPRF Equity Action Plan”), *available at* [https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CAS4JM0BCC1A/\\$file/Office%20of%20Equity%20and%20Student%20Success%20Action%20Plan%20\(003\).pdf](https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CAS4JM0BCC1A/$file/Office%20of%20Equity%20and%20Student%20Success%20Action%20Plan%20(003).pdf).

<sup>6</sup> *Id.* at 2.



to opportunities for all students, with particular attention to removing barriers for those student groups who have been historically and currently marginalized.<sup>7</sup>

Describing the impact of REAT and other “racial equity policy” tools on “equity” policies and decisions throughout the District, Dr. Hardy boasted:

Equity is everywhere . . . . Everything is about equity . . . . And Dr. Fiorenza [Assistant Superintendent for Student Learning] has been doing a phenomenal job **racializing** our work, the **racialization** of assessment . . . . [w]e have to not let the word equity become a siloed thing that is a side conversation, but that it is permeating our organization.<sup>8</sup>

### The District’s Racially-Exclusive Mentorship Program

At the District’s January 27, 2022, Board meeting, the Department of Equity and Student Success presented an addendum labeled “Racial Equity Initiatives Overview.”<sup>9</sup> One initiative listed in the materials is “Motivational Mentorship,” for which the column “Research Synopsis” states, “Group mentorship is derived from West African traditions and mitigates the imbalanced ratio of mentor to mentees, views participants within the context of the group or community, and relies on the importance of the collective/community subscribed to in African and other non-European cultures.”<sup>10</sup>

The District identified its Motivational Mentorship Program as “dedicated to the success and security of *students of color* as they explore the many ways of knowing in academia . . . We lean into transformative learning and care via culturally relevant teachings that inform our daily plus weekly practices, inspiring critical discourse, vulnerability, authenticity, and joy.”<sup>11</sup>

<sup>7</sup> Racial Equity Policy 7:12, Procedures, at 1 (2020) (hereinafter “Racial Equity Policy 7:12, Procedures”) (emphasis added), available at [https://campussuite-storage.s3.amazonaws.com/prod/1558748/bd01c7ae-765f-11e9-9402-0a56f8be964e/2242777/12d5b6da-8b22-11eb-a66b-0ec8fc0ddee1/file/Racial%20Equity%20Policy%20Procedures%207\\_12%202020627%20Final.pdf](https://campussuite-storage.s3.amazonaws.com/prod/1558748/bd01c7ae-765f-11e9-9402-0a56f8be964e/2242777/12d5b6da-8b22-11eb-a66b-0ec8fc0ddee1/file/Racial%20Equity%20Policy%20Procedures%207_12%202020627%20Final.pdf).

<sup>8</sup> Dr. Patrick Hardy’s Presentation at Oak Park and River Forest High School, D200 Board of Education Regular Meeting – Jan. 27, 2022, [https://www.youtube.com/watch?v=2-g952fOIo&list=PLy60NMMcuTof1uE8nBnG2OrB9wYj1jy\\_r&index=16](https://www.youtube.com/watch?v=2-g952fOIo&list=PLy60NMMcuTof1uE8nBnG2OrB9wYj1jy_r&index=16), at 2:13.23 mark (emphasis added).

<sup>9</sup> Department of Equity and Student Success, Racial Equity Initiatives Overview, Jan. 27, 2022, available at [https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CAYPQC63E64B/\\$file/20220127%20Reg%20OESS%20Initiatves%20Metrics%20and%20Research.pdf](https://go.boarddocs.com/il/oprfhs/Board.nsf/files/CAYPQC63E64B/$file/20220127%20Reg%20OESS%20Initiatves%20Metrics%20and%20Research.pdf).

<sup>10</sup> *Id.* at 1.

<sup>11</sup> Shannon Perryman, coordinator of Motivational Mentorship Program, Oak Park and River Forest High School, D200 Board of Education Regular Meeting – Jan 27, 2022, <https://www.youtube.com/watch?v=2->



## DFI's Civil Rights Complaint

On June 1, 2022, DFI filed a civil rights complaint<sup>12</sup> (“Complaint”) with OCR, asking it to investigate the District’s racial equity policies, including its race-based grading policy.

On June 30, 2022, DFI filed a twenty-one page supplement<sup>13</sup> to the Complaint, providing further details regarding the District’s “racial equity” policies<sup>14</sup> adopted by the Board on April 25, 2019. In the supplement, DFI provided additional information to OCR regarding the District’s newly adopted equity policies, including policies regarding race-based equitable grading, capital expenditures (resource allocation), the mentorship program, professional development, race-based hiring practices, and curriculum planning.

DFI filed its Complaint and supplemental filing because it believes the District’s race-based “equity” policies violate Title VI of the Civil Rights Act of 1964<sup>15</sup> and the Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution,<sup>16</sup> which prohibit race-based discrimination (among other forms of discrimination) in programs or activities receiving federal financial assistance, such as public schools like Oak Park and River Forest School District 200.

## OCR's Response to DFI's Complaint

On November 22, 2022, OCR Region V Supervising Attorney Marcela Sanchez Aguilar sent a dismissal letter (“Dismissal”) to DFI in response to DFI’s Complaint.<sup>17</sup> OCR dismissed each of DFI’s eight allegations of racially discriminatory policies by the District, citing a “lack of sufficient detail” as a basis for dismissal of the allegations, with the exception of DFI’s allegation regarding

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[g952fOI0&list=PLy60NMMcuTof1uE8nBnG2QrB9wYj1jy\\_r&index=16](https://dfipolicy.org/wp-content/uploads/2022/06/OCR-Complaint-OPRF-06.01.2022-signed.pdf), at 1:56:15 mark (emphasis added).

<sup>12</sup> Letter from Robert S. Eitel, President, Defense of Freedom Institute for Policy Studies, to the U.S. Dept. of Ed., Office for Civil Rights, Jun. 1, 2022, at 2, available at <https://dfipolicy.org/wp-content/uploads/2022/06/OCR-Complaint-OPRF-06.01.2022-signed.pdf> (“Complaint”).

<sup>13</sup> Supplemental Letter from Robert S. Eitel, President, Defense of Freedom Institute for Policy Studies, to the U.S. Dept. of Ed., Office for Civil Rights, Jun. 30, 2022, available at <https://dfipolicy.org/wp-content/uploads/2022/12/DFI-OCR-Supplemental-Complaint-OPRF-06.30.2022.pdf> (“Supplemental Letter”).

<sup>14</sup> Oak Park and River Forest H.S.D. 200, Policy Manual, 298 (2002) (“District 200 Policy Manual”) (Section 7:12: Racial Equity Policy), available at <https://campussuite-storage.s3.amazonaws.com/prod/1558748/bd01c7ae-765f-11e9-9402-0a56f8be964e/2390643/b78a28aa-a921-11ec-8a55-0e37078c7be1/file/PolicyManual2022.pdf>.

<sup>15</sup> 42 U.S.C. § 2000d.

<sup>16</sup> U.S. Const. amend. XIV, § 2.

<sup>17</sup> Letter from Marcela Sanchez Aguilar, Supervisory Attorney, Office for Civil Rights (Region V) to the Defense of Freedom Institute for Policy Studies, Nov. 22, 2022, available at <https://dfipolicy.org/wp-content/uploads/2022/12/OCR-Decision-November-22-2022-Oak-Park-River-Forest-School-District-200.pdf> (“Dismissal Letter”).



the high school’s “Motivational Mentorship” program (“mentorship program”), which appears to be limited to students of particular racial backgrounds – thereby excluding students of other racial backgrounds from the mentorship program (“Allegation 8”).

OCR dismissed Allegation 8, but cited a different rationale: resolution of the allegation.

Justifying its dismissal of Allegation 8, OCR noted that on November 22, 2022 (the same day on which OCR emailed its dismissal letter to DFI), the District sent a district-wide email announcement concerning the mentorship program’s previous race-based restrictions:

[T]he District emailed a notice to District staff and students which stated “The Motivational Mentorship Program is open to ALL students regardless of race, ethnicity, religion, gender, gender identity, sexual orientation, etc.,” and that “[a]lthough there is a referral process where staff members and parents can refer students for mentoring, disclosing a student’s race is not an option or requirement and therefore has no influence on mentoring services.”<sup>18</sup>

OCR had contacted the District concerning Allegation 8 prior to the District’s email clarification and observed that OCR may “dismiss a complaint allegation when it obtains credible information indicating that the allegation has been resolved.”<sup>19</sup> Having received the District’s assurance that the mentorship program was “open to all students without regard to race” and the District’s mass distribution email clarification, OCR wrote that it then “determined Allegation 8 has been resolved and dismissed the allegation.”<sup>20</sup>

DFI believes the American people have an important and compelling interest in OCR’s decisions (including those decisions made by OCR’s Region V personnel) regarding Title VI enforcement and, specifically, the District’s racially exclusionary mentorship program and external communications with the District regarding the resolution and dismissal of Allegation 8 by OCR.

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 decision memoranda, directives, policy interpretations, or policy guidance related to OCR Docket # 05-22-1469, including all such records related to OCR’s November 22, 2022 Dismissal Letter (identified *supra*), DFI’s Civil Rights Complaint (filed June

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<sup>18</sup> Dismissal Letter at 5.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*



1, 2022), DFI’s Supplemental Filing (filed June 30, 2022), and DFI’s response<sup>21</sup> to OCR’s request for additional information (filed September 15, 2022) signed, approved, or otherwise adopted by any of the following Departmental officials beginning on June 1, 2022, through the date the search for the records is conducted:

- a. OCR Region V Supervisory Attorney Marcela Sanchez Aguilar
  - b. OCR Region V Senior Attorney Jason Frazer
  - c. Assistant Secretary for Civil Rights Catherine Lhamon
  - d. OCR Chief of Staff Ramin Taheri
  - e. OCR Confidential Assistant Hannah Zack
  - f. OCR Confidential Assistant Maia Brockbank
  - g. OCR Deputy Assistant Secretary for Policy Monique Dixon
  - h. OCR Director, Program Legal Group, Alejandro Reyes
  - i. OCR Deputy Assistant Secretary for Legal Affairs Seth Galanter
  - j. OCR Senior Counsel Alice Abrokwa
  - k. OCR Senior Counsel Jasmine Bolton
  - l. OCR Senior Counsel Jady Hsin
  - m. OCR Senior Counsel Adaku Onyeka-Crawford
  - n. OCR Deputy Assistant Secretary for Strategic Operations and Outreach Suzanne Goldberg
  - o. OCR Director, OPEN Center, Heather Gunnarson
  - p. OCR Deputy Assistant Secretary for Management and Planning Trina Shields
  - q. OCR Executive Officer Anna Kasior
  - r. OCR Deputy Assistant Secretary for Enforcement Randolph Wills
  - s. OCR Enforcement Director Meena Morey Chandra
  - t. OCR Enforcement Director Lisa Chang
  - u. OCR Senior Legal Advisor Mia Karvonides
  - v. OCR Enforcement Director Emily McCarthy
  - w. OCR Senior Counsel Sherrell Evans
  - x. OCR Senior Counsel Joshua Schopf
  - y. Any other person using an email address ending in [OCR@ed.gov](mailto:OCR@ed.gov)
  - z. Any other person using an email address ending in [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)
2. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation and virtual meeting recordings between the Departmental officials listed in Item 1 and any of the following officials with the Oak Park and River Forest School District 200 (“OPRF”) between May 1, 2022, through the date the search for the records is conducted (note: DFI believes that a search using item “a” below is likely to capture most or all email communications from and with the school officials listed in “b”-“r” but includes the names of those officials for search purposes as they may have used different email addresses in their communications with Departmental officials):

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<sup>21</sup> Supplemental Letter.



- a. Any person using an email address ending in @oprfs.org
- b. OPRF Superintendent Dr. Gregory T. Johnson
- c. OPRF Executive Assistant Lisa Evans
- d. OPRF Exec. Dir. Of Communications and Community Relations Karin Sullivan
- e. OPRF Exec. Dir. of Equity and Student Success Dr. Latonya Applewhite
- f. OPRF Exec. Dir. of Equity and Student Success Dr. Patrick Hardy
- g. OPRF Administrative Assistant Melody Brown
- h. OPRF Exec. Dir. Of Operations Ronald Anderson
- i. OPRF Administrative Assistant Marian Gerera
- j. OPRF Asst. Supt. For Student Learning Dr. Laurie Fiorenza
- k. OPRF Administrative Assistant Angelica Rodriguez
- l. OPRF Motivational Mentor Patrick Chrisp
- m. OPRF Administrative Assistant Melody Brown
- n. OPRF Board Member Tom Cofsky
- o. OPRF Board Member Gina Harris
- p. OPRF Board Member Kebreab Henry
- q. OPRF Board Member Ralph Martire
- r. OPRF Board Member Mary Anne Mohanraj
- s. OPRF Board Vice President Sara Spivy

## **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>22</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>23</sup> Upon request, ED must “promptly” make the requested records available to the requester.<sup>24</sup> Notably, covered agency records include materials provided to ED by both private and governmental organizations.<sup>25</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>26</sup> ED must conduct a search calculated to find responsive records in ED’s control at the time of the request.<sup>27</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>28</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>29</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,

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<sup>22</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>23</sup> *Department of Justice (DOJ) v. Tax Analysts*, 492 U.S. 136 at 144-45 (1989).

<sup>24</sup> 5 U.S.C. § 552(a)(3)(A).

<sup>25</sup> *Id.* at 144.

<sup>26</sup> 5 U.S.C. § 552(a)(3)(A)(i).

<sup>27</sup> *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004).

<sup>28</sup> 5 U.S.C. § 552(a)(3)(B).

<sup>29</sup> 5 U.S.C. § 552(a)(6)(A)(i).





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 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>30</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

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<sup>30</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).



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.

### **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 Title VI enforcement and case resolution policies 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>31</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 decision memoranda and external communications regarding the Department’s Title VI enforcement and case resolution policies 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 the Department’s race-based discrimination policies, 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

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<sup>31</sup> See *Cause of Action v. FTC*, 799 F.3d 1108, at 1115-16 (D.C. Cir. 2015).



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 Department's student loan debt discharge policies, 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.