

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

DEFENSE OF FREEDOM
INSTITUTE
FOR POLICY STUDIES, INC.

Plaintiff,

v.

U.S. DEPARTMENT OF
EDUCATION

Defendant.

Case No. 23-cv-_____

COMPLAINT
FOR DECLARATORY,
INJUNCTIVE, AND
OTHER RELIEF

COMPLAINT

Plaintiff, Defense of Freedom Institute for Policy Studies (“DFI”), by its undersigned attorneys, brings this action against defendant, U.S. Department of Education (the “Department”), and alleges as follows:

INTRODUCTION

1. On March 28, 2022, DFI served two requests under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, on the Department. Notwithstanding the passage of over seventeen months, and its representations that it expected to provide “a large amount of responsive

records,” the Department has not produced documents responsive to one request and produced merely four that are responsive to the other.

2. DFI’s FOIA requests seek records relating to the Department’s role in diluting the federal Desegregation of Public Education program, the focus of which the Department has changed to “sex desegregation” and other forms of “equity-based” social agendas, including instruction on systemic racism and thwarting parental rights. Millions of taxpayer dollars have flowed from the Department in grants to “Equity Assistance Centers,” whose mission is to further the program’s new focus. This shift not only expands the program beyond its original purpose – namely, assisting schools in achieving and ensuring racial desegregation -- it does so by exceeding the Department’s legal authority.

3. DFI’s FOIA requests are calculated to demonstrate the Department’s failure to stay within statutory boundaries and its own guidelines for a program with an important, focused mission. The Department’s utter failure to provide a complete production of records responsive to DFI’s FOIA requests underscores the apparent, impermissible overreach by the Department.

4. DFI now seeks relief from this Court under FOIA and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, declaring the

Department in violation of its legal obligations under FOIA, enjoining it from continuing to withhold responsive records, and ordering the immediate production of all responsive agency records.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 and may grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) because DFI resides in the District, including maintaining an office in Titusville, Florida.

7. Because the Government has failed to comply with the applicable time-limit provisions of FOIA, DFI is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to the requested relief from this Court.

PARTIES

8. DFI is an independent, nonprofit organization that is tax exempt pursuant to I.R.C. § 501(c)(3) and organized and existing under the laws of the Commonwealth of Virginia. DFI's registered agent is located at 250 Browns Hill Court, Midlothian, VA 23114. DFI is comprised of former senior Department officials who founded DFI to defend and advance freedom and

opportunity for every American family, student, entrepreneur, and worker, and to protect civil and constitutional rights at school and in the workplace. To achieve this mission, DFI's efforts include, inter alia, submitting FOIA requests to federal agencies to obtain records relating to the consideration and implementation of policies imposed by the federal government and its officials on the American people, and then posting records produced by the agencies online for public review.

9. The Department is a department of the executive branch of the federal government within the meaning of 5 U.S.C. § 552(f)(1), with its headquarters at 400 Maryland Avenue, S.W., Washington, DC 20202. The Department has possession, custody, and control of the records responsive to DFI's two FOIA requests.

STATEMENT OF FACTS

The Attorney General's FOIA Disclosure Directive

10. In a March 15, 2022 directive to executive departments and agencies (including the Department), Attorney General Merrick Garland emphasized that FOIA's "basic purpose . . . is to ensure an informed citizenry,' which is 'vital to the functioning of a democratic society [and] needed to check against corruption and to hold the governors accountable to the governed.'" Memorandum for Heads of Executive Departments and Agencies: Freedom of

Information Act Guidelines, Memo Att'y Gen (2022), <https://rb.gy/znu3f> (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)) (“Garland Directive”).

11. The Garland Directive emphasized the “Presumption of Openness” required of federal departments and agencies, including the Department, noting that responsive records may only be withheld “if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A)(i).” *Id.* at 1. Attorney General Garland warned agencies that requested “[i]nformation that might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure” and that “[i]n case of doubt, openness should prevail.” *Id.* Attorney General Garland instructed further that pursuant to 5 U.S.C. § 552(a)(8)(A)(ii), when “an agency determines that it cannot make full disclosure of a requested record, FOIA requires that it ‘consider whether partial disclosure of information is possible’ and ‘take reasonable steps necessary to segregate and release nonexempt information.’” *Id.*

DFI's First FOIA Request

12. On March 28, 2022, DFI submitted to the Department a FOIA request (the "First Request," attached hereto as **Exhibit A-1**). The First Request was for particular records relating to the Department's award of grants to and cooperative agreements with "Equity Assistance Centers."

13. Despite the passage of 527 days and the Department's representations to DFI that production of records was underway, the Department has failed to produce records in response to DFI's First Request.

14. In its First Request, DFI sought the following records:

All non-deliberative communications of ED officials (see "Custodians" *infra*) within the Office of the Secretary, Office of the Deputy Secretary, Office for Civil Rights, Office of the General Counsel, Office of Communications and Outreach, Office of Legislation and Congressional Affairs, particularly communications sent by, copied to, or received by ED officials from January 1, 2015, through the date the search is conducted, which reference any of the following:

- a. Equity Assistance Center, Equity Assistance Centers, EAC, or EACs
- b. Desegregation Assistance Centers, Desegregation Centers, DAC, or DACs
- c. 84.004D
- d. Civil Rights Training and Advisory Service or Civil Rights Training and Advisory Services
- e. 34 CFR 270
- f. 42 USC 2000c
- g. WestEd
- h. Brown University – The Education Alliance Equity and Diversity Projects

- i. Mid-Atlantic Equity Consortium
- j. Intercultural Development Research Association
- k. Kansas State University – College of Education, Dean of Education
- l. Education Northwest
- m. Southeastern Equity Alliance, Inc.
- n. Touro College – School of Education, Lander Center for Education Research
- o. Metropolitan State College of Denver
- p. Indiana University – Great Lakes Equity Center

Each application received by ED for a program award grant (Program No. 84.004D), whether or not awarded, to fund “Equity Assistance Center(s)” or “Desegregation Assistance Center(s)” or “Training and Advisory Services,” authorized under title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c-2000c2, 2000c5, and 34 CFR part 270 for fiscal years 2016 (Federal Register Document Number 2016-16809, published July 18, 2016), 2017, 2018, 2019, 2020, 2021, through the present (Federal Register Document Number 2022-03208, published February 15, 2022) from July 18, 2016, through the date the search is conducted.

All records of ED officials (see “Custodians” *infra*) related to the receipt, evaluation, processing, and award or declination of award for each grant application identified in Item 2 [that is, the preceding paragraph]. “Records” should include but not be limited to electronic mail (“email”), texts, letters, memoranda, annual performance reports, and other documentation regarding applications received by ED from July 18, 2016, through the date the search is conducted.

Each cooperative agreement executed between ED/OESE and award grant recipient (*i.e.*, each entity to which an EAC grant was awarded) pursuant to the program described in Item 2 [that is, the second paragraph from top, *supra*], from July 18, 2016, through the date the search is conducted, including but not limited to the cooperative agreements (and any

modifications or revisions to those agreements) with each of the following:

- a. WestEd
- b. Brown University – The Education Alliance
Equity and Diversity Projects
- c. Mid-Atlantic Equity Consortium
- d. Intercultural Development Research
Association
- e. Kansas State University – College of Education,
Dean of Education
- f. Education Northwest
- g. Southeastern Equity Alliance, Inc.
- h. Touro College – School of Education, Lander
Center for Education Research
- i. Metropolitan State College of Denver
- j. Indiana University – Great Lakes Equity Center

All records of ED officials (see “Custodians” *infra*), including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation, which provided the evidentiary basis (and sources of such evidentiary basis) upon which ED relied in its Funding Opportunity Description, published in the Federal Register on February 15, 2022 (Document Number 2022-03208), indicating that “instances of online bullying related to race or ethnicity as a result of an increase in virtual instruction during the pandemic” had occurred, from January 20, 2021, through the date the search is conducted.

All non-deliberative communications of ED officials (see “Custodians” *infra*), (particularly communications sent by, copied to, or received by ED officials within the Office of the Secretary, Office of the Deputy Secretary, Office for Civil Rights, Office of the General Counsel, Office of Communications and Outreach, Office of Legislation and Congressional Affairs), from January 20, 2021, through the date the search is conducted, which reference:

- a. Withdrawal of Notice Inviting Applications and Cancellation of the Competition for the Equity Assistance Centers Program
- b. 86 CFR 2653
- c. Assistance Listing number 84.004D
- d. 84.004D

See Exhibit A-1, at 5-6.

15. The release of these records is in the public interest because their disclosure will inform the American people about the Department's diversion of funding directed at racial desegregation of schools to expanding and refocusing the program on new "equity-based" social agendas relating to, for example, gender and sexual preferences.

16. On March 29, 2022, the Department provided an electronic FOIA "Request Acknowledgement" notification to DFI, confirming receipt of the First Request and assigning it tracking number 22-02360-F. The Acknowledgement Letter indicated that the First Request had been "forwarded to the primary responsible office(s) for action." (The Department's FOIA Acknowledgement Letter is attached hereto as **Exhibit A-2**.)

17. On April 26, 2022, the Department electronically notified DFI in its "20-Day Status Notification" that "[d]ue to the unusual circumstances that exist with your FOIA requests as defined by U.S.C. § 552(a)(6)(B)(i)(ii), the Department will not be able to respond by the 20 day statutory requirement.

The scope of your FOIA requests requires the Department to conduct a vast search across multiple program offices, which we anticipate will result in a large amount of responsive records.” (The Department’s 20-Day Status Notification is attached hereto as **Exhibit A-3**.) The Department has never identified any of the “unusual circumstances” it cited as justification for its failure to meet the statutory deadline for producing responsive records.

18. On June 14, 2022, DFI emailed the Department’s Chief FOIA Officer, Dr. Deborah O. Moore, to “check on the production timetable for three particular FOIA requests” including “22-02360-F,” noting that the request was for “ED Records Related to Equity Assistance Centers.” (The Production Request Inquiry is attached hereto as **Exhibit A-4**.)

19. On June 15, 2022, the Department emailed its reply, stating that its Office of Elementary and Secondary Education “is working on the non-administrative elements . . . and I’d estimate the . . . end of July timeframe” for production. (The Department’s Response to Production Request Inquiry is attached hereto as **Exhibit A-5**.)

20. At a July 7, 2022 virtual meeting organized by the Department to discuss three DFI FOIA requests, including the First Request, DFI met with the Department’s Chief FOIA Officer and the Director of the Department’s FOIA Service Center, Gregory A. Smith.

21. On July 18, 2022, the Department's Chief FOIA Officer sent a follow-up email that described the July 7 discussion and included proposals to expedite the Department's production of responsive records to DFI. (The Department's Proposed Narrowing of Initial Record Search is attached hereto as **Exhibit A-6.**)

22. On July 19, 2022, DFI responded that the Department's Chief FOIA Officer's July 18, 2022 email "accurately reflects our discussion and efforts to begin production of the requested records. As mentioned in the discussion, the [responsive] cooperative agreements should be easily accessed (and there are very few of them), so it is DFI's hope that those would be produced quickly at this point. Thanks, again!" (Response to Department's Proposed Initial Records Search is attached hereto as **Exhibit A-7.**)

23. On July 28, 2022, DFI emailed the Department's Chief FOIA Officer and the FOIA Service Center Director to "check on the status of these records (particularly the Cooperative Agreements, as they are relatively discrete records [that] should be more easily provided)." (The Production Request Inquiry is attached hereto as **Exhibit A-8.**)

24. On July 28, 2022, the Department's Chief FOIA Officer emailed a reply to DFI, indicating that "[r]egarding the status of your requests, including the cooperative agreements, we are working with the program offices and

[subject matter experts] to obtain any responsive records so that we can get them to you as soon as possible.” (The Department’s Response to DFI’s Production Request Inquiry is attached hereto as **Exhibit A-9**.)

25. On August 22, 2022, DFI sent an additional email inquiry to the Department’s Chief FOIA Officer and the FOIA Service Center Director stating as follows:

Good morning, Deborah,

Can you please update me on the status of the production of the Equity Assistance Center cooperative agreements?

These are among the most discrete, readily-identifiable (and producible) records that ED controls.

DFI submitted its FOIA request for these records to ED on March 28, 2022.

DFI has worked with ED to identify such records and had expected that production would have occurred quite some time ago.

Thanks for your assistance!

(The Production Request Inquiry is attached hereto as **Exhibit A-10**.)

26. On August 22, 2022, the Department’s FOIA Service Center Director emailed a reply “acknowledging and responding to your inquiry” and noting that while processing efforts have continued, “[w]e regret that we have not been able to provide definitive dates up to this point; however, we hope to respond to select elements soon. We appreciate your/DFI’s continued patience

as the Department processes these requests.” (The Response to Production Request Inquiry is attached hereto as **Exhibit A-11**.)

27. To date, the Department has failed to provide records responsive to DFI’s First Request, despite DFI’s efforts to assist the Department by meeting with its representatives and clarifying the scope of the request.

28. The Department has failed to explain or otherwise justify its failure to provide responsive records to DFI.

29. Notwithstanding the Department’s commitment in its April 26, 2022 “20-Day Status Notification” to provide responsive records on a rolling basis, it has failed to explain or otherwise justify its failure to provide responsive records, either on a rolling basis or otherwise.

30. As a result of the Department’s failure to timely or otherwise provide records responsive to DFI’s First Request in accordance with the Department’s statutory obligations, DFI has constructively exhausted its administrative remedies. DFI thus seeks immediate judicial review of this matter.

DFI's Second FOIA Request

31. Also on March 28, 2022, DFI submitted a second FOIA request (the “Second Request,” attached hereto as **Exhibit B-1**) to the Department.

32. Like the First Request, the Second Request was for particular records relating to the Department’s award of grants to and cooperative agreements with “Equity Assistance Centers,” but the Second Request focused on the Department’s Office of Elementary and Secondary Education (“OESE”), which has direct responsibility for managing the “Equity Assistance Center” grant program.

33. Despite the passage of 527 days and the Department’s representation to DFI that production of responsive records was in process, only four records have been produced, and the Department has otherwise failed to produce records in response to DFI’s Second Request.

34. The Second Request was largely identical to the First Request. One significant difference was that one category in the Second Request sought more narrowly “[a]ll non-deliberative communications of ED officials (see ‘Custodians’ *infra*) within the Office of Elementary and Secondary Education (‘OESE’), particularly communications sent by, copied to, or received by *ED OESE officials* from January 1, 2015, through the date the search is conducted” (emphasis added), while the First Request sought such communications from

other Department offices – namely, “*the Office of the Secretary, Office of the Deputy Secretary, Office for Civil Rights, Office of the General Counsel, Office of Communications and Outreach, Office of Legislation and Congressional Affairs,*” (emphasis added). Compare Exhibit A-1 at 5 with Exhibit B-1 at 5.

35. Similarly, whereas another category in the Second Request sought “[a]ll non-deliberative communications of ED officials (see ‘Custodians’ *infra*) within OESE from November 3, 2020 through the date the search is conducted” (emphasis added), the First Request sought such communications “of ED officials (see ‘Custodians’ *infra*), (*particularly communications sent by, copied to, or received by ED officials within the Office of the Secretary, Office of the Deputy Secretary, Office for Civil Rights, Office of the General Counsel, Office of Communications and Outreach, Office of Legislation and Congressional Affairs*), from January 20, 2021, through the date the search is conducted” (emphasis added). Compare Exhibit A-1 at 5 with Exhibit B-1 at 5.

36. A final significant difference was that the Second Request sought two additional categories of documents not included in the First Request:

A list of the 36 State educational agencies (“SEAs”), 196 local educational agencies (“LEAs”), and 277 schools in 49 states and territories receiving targeted and intensive assistance from Equity Assistance Centers in fiscal year 2020, as stated on page C-48 of the document entitled “School Improvement Programs” accessible on ED’s website.

All documents identifying the Midwestern state and the EAC that “helped to change the way nearly 330,000 elementary, middle, and high school students learn social studies,” as stated on page C-49 of the document entitled “School Improvements Programs” accessible on ED’s website.

Compare Exhibit A-1 at 5-6 with Exhibit B-1 at 5-7.

37. The release of these records is in the public interest because their disclosure will inform the American people about the Department’s diversion of funding directed at racial desegregation to expanding and refocusing the program on new “equity-based” social agendas relating to, for example, gender and sexual preferences that are far outside the Department’s statutory authority.

38. On March 29, 2022, the Department provided an electronic FOIA “Request Acknowledgement” notification to DFI, confirming receipt of the Second Request and assigning it tracking number 22-02358-F. The Acknowledgement Letter indicated that the Second Request had been “forwarded to the primary responsible office(s) for action.” (The Department’s FOIA Request Acknowledgement is attached hereto as **Exhibit B-2**.)

39. On April 26, 2022, the Department electronically notified DFI in its “20-Day Status Notification” that “[d]ue to the unusual circumstances that exist with your FOIA requests as defined by U.S.C. § 552(a)(6)(B)(i)(ii), the Department will not be able to respond by the 20 day statutory requirement.

The scope of your FOIA requests requires the Department to conduct a vast search across multiple program offices, which we anticipate will result in a large amount of responsive records.” (The Department’s 20-Day Status Notification is attached hereto as **Exhibit B-3**.) The Department has never identified any of the “unusual circumstances” it cited as justification for its failure to meet the statutory deadline for producing responsive records.

40. On June 14, 2022, DFI emailed the Department’s Chief FOIA Officer to “check on the production timetable for three particular FOIA requests” including “22-02358-F,” noting that the request was for “OESE Records Related to Equity Assistance Centers (20 day notification letter issued April 26, 2022) (FOIA request submitted March 28, 2022).” *See* Exhibit A-3.

41. On June 15, 2022, the Department emailed a reply, stating that “OESE continues its search for responsive documents for several elements of this requests [sic], and I’d estimate end of July for interim release of those discrete items not requiring and [sic] admin search, but of course we will do interims for documents as they become available” *See* Exhibit A-5.

42. The Second Request was discussed at the July 7, 2022 virtual meeting between DFI and the Department referenced in Paragraph 20 above.

43. On July 18, 2022, the Department’s Chief FOIA Officer sent a follow-up email that described the July 7 discussion and included proposals to

expedite the Department's production of responsive records to DFI. *See* Exhibit A-6.

44. On July 28, 2022, DFI sent an email inquiry to the Department's Chief FOIA Officer and its FOIA Service Center Director to "check on the status of these records (particularly the Cooperative Agreements, as they are relatively discrete records [that] should be more easily provided)." *See* Exhibit A-8.

45. On July 28, 2022, the Department's Chief FOIA Officer emailed a reply to DFI, indicating that "[r]egarding the status of your requests, including the cooperative agreements, we are working with the program offices and [subject matter experts] to obtain any responsive records so that we can get them to you as soon as possible." *See* Exhibit A-9.

46. On August 22, 2022, DFI sent an additional email inquiry to the Department's Chief FOIA Officer and its FOIA Service Center Director stating as follows:

Good morning, Deborah,

Can you please update me on the status of the production of the Equity Assistance Center cooperative agreements?

These are among the most discrete, readily-identifiable (and producible) records that ED controls.

DFI submitted its FOIA request for these records to ED on March 28, 2022.

DFI has worked with ED to identify such records and had expected that production would have occurred quite some time ago.

Thanks for your assistance!

See Exhibit A-10.

47. On August 22, 2022, the Department's FOIA Service Center Director sent a reply email "acknowledging and responding to your inquiry" and noting that while processing efforts have continued, "[w]e regret that we have not been able to provide definitive dates up to this point; however, we hope to respond to select elements soon. We appreciate your/DFI's continued patience as the Department processes these requests." *See Exhibit A-11.*

48. On October 17, 2022, in an "interim response" to DFI's Second Request, the Department provided DFI with four responsive records. (The Department's Interim Records Provision in response to the Second Request is attached hereto as **Exhibit B-4**.) Specifically, the Department produced four cooperative agreements between the Department and award recipients that are partially responsive to the fourth category of requests in the Second Request.

49. Upon information and belief, the Department is withholding a large number of additional documents responsive to the fourth category of requests in the Second Request. In its October 17, 2022 communication, the Department noted it was still “continuing to process your request,” and that it would provide “any additional documents under a separate cover letter.” See Exhibit B-4 at 3.

50. Other than the four cooperative agreements, the Department has failed to provide records responsive to any of the other seven categories in the Second Request, either in whole or in part.

51. Since its October 17, 2022 interim production of the four cooperative agreements, the Department has failed to explain or otherwise justify its failure to complete its production.

52. As a result of the Department’s failure to timely or otherwise provide on more than an interim basis more than four records responsive to DFI in accord with its statutory obligations, DFI has now constructively exhausted its administrative remedies. DFI thus seeks immediate judicial review of the matter.

The Department's Violation of the Garland Directive

53. The Department's failure to timely or otherwise produce non-exempt records responsive to DFI's First and Second Requests directly violates the Garland Directive regarding the FOIA obligations of departments and agencies within the executive branch of the federal government, including the Department.

54. Lastly, most, if not all, communications from DFI to the Department after June 2022 originated from Florida, as DFI's then-Senior Counsel with primary responsibility for DFI's FOIA efforts resided in Florida at that time (and continues to do so).

FIRST CAUSE OF ACTION

Violation of FOIA, 5 U.S.C. § 552
(Wrongful Withholding by the Department of
Non-Exempt Records Responsive to First Request)

55. DFI repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth below.

56. Through its First Request, DFI properly requested records within the possession, custody, and control of the Department.

57. The Department is a federal agency subject to FOIA's statutory provisions and is obligated to provide, in a timely manner, all non-exempt records responsive to DFI's First Request. In the event that the Department

withholds any responsive records, it must provide a lawful reason for withholding those records in response to a FOIA request.

58. After the passage of 527 days, the Department has provided no such lawful reason for withholding responsive records and has demonstrably ignored DFI's First Request, the Department's statutory obligations under FOIA, and the Garland Directive.

59. By failing to provide non-exempt records responsive to DFI's First Request, the Department is wrongfully withholding agency records lawfully requested by DFI in violation of the Department's statutory FOIA obligations.

60. DFI is thus entitled to declaratory and injunctive relief requiring the Department to produce promptly any and all records responsive to the First Request.

SECOND CAUSE OF ACTION

Violation of FOIA, 5 U.S.C. § 552

**(Wrongful Withholding by the Department of
Non-Exempt Records Responsive to Second Request)**

61. DFI repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth below.

62. Through its Second Request, DFI properly requested records within the possession, custody, and control of the Department.

63. The Department is a federal agency subject to FOIA's statutory provisions and is obligated to provide, in a timely manner, all non-exempt records responsive to DFI's Second Request. In the event that the Department withholds records responsive to a FOIA request, it must provide a lawful reason for withholding records.

64. After the passage of 527 days, the Department has provided no such lawful reason for withholding all but four responsive records and has demonstrably ignored DFI's Second Request, the Department's statutory obligations under FOIA, and the Garland Directive.

65. By failing to provide non-exempt records responsive to DFI's Second Request, the Department is wrongfully withholding agency records lawfully requested by DFI in violation of the Department's statutory FOIA obligations.

66. DFI is thus entitled to declaratory and injunctive relief requiring the Department to produce promptly any and all records responsive to DFI's Second Request (besides the four already produced).

WHEREFORE, DFI respectfully requests that this Court:

- a. Assume jurisdiction in this matter and maintain jurisdiction until the Government complies with its statutory FOIA production obligations and any and all orders of this Court;

- b. Declare the Government in violation of FOIA and order it to conduct immediately a records search or searches reasonably calculated to identify all records responsive to DFI's First and Second Requests;
- c. Order the Government to produce, within twenty days of the Court's order or by other such date as the Court deems appropriate, any and all records responsive to DFI's First and Second Requests;
- d. Enjoin the Government from continuing to withhold any and all non-exempt records responsive to DFI's First and Second Requests;
- e. Award DFI its fees, costs, disbursements and expenses, including reasonable attorney's fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and
- f. Grant DFI equitable and such other relief as this Court may deem just and proper.

Dated this 5th day of September, 2023, at Titusville, Florida.

Respectfully submitted,

**DEFENSE OF FREEDOM
INSTITUTE FOR POLICY
STUDIES, INC.**



Martha A. Astor
FL Bar No.: 1039011
323 S. Washington Avenue
Suite 9
Titusville, FL 32796
Telephone: (321) 390-2707
Email: martha.astor@dfipolicy.org

/s/ Donald A. Daugherty, Jr.
Donald A. Daugherty, Jr.
(*pro hac vice* to be sought)

1455 Pennsylvania Avenue, N.W.
Suite 400
Washington, DC 20004
Telephone: (414) 559-6902
Email: don.daugherty@dfipolicy.org

*Counsel for the Defense of Freedom
Institute for Policy Studies, Inc.*

Exhibit A-1

March 28, 2022 FOIA Request



March 28, 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 Related to Equity Assistance Centers
(DFI FOIA No. 100-10-22)

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. 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.

Pursuant to Title IV of the Civil Rights Act of 1964 (“Desegregation of Public Education”), the U.S. Department of Education (“ED”) is authorized to “render technical assistance” through grants awarded to applicants which assist school boards and other responsible governmental agencies in the “preparation, adoption, and implementation of plans for the desegregation of public schools.”¹ “Desegregation Assistance Centers” (“DAC”) were established and funded by ED to render technical assistance for the explicit purpose of desegregating schools, in compliance with the Civil Rights Act of 1964.

In 2016, ED’s Office of Elementary and Secondary Education (“OESE”) changed the name of the DACs to “Equity Assistance Centers” (“EAC”), indicating a broader scope of permitted “equity” interests well beyond providing technical assistance for implementing successful desegregation plans - and a considerably wider scope of potential grant application eligibility. ED issued new regulations which effectively diluted the original purpose of the DACs (*e.g.*, to “increase socioeconomic diversity” and permitting the Secretary of Education wider authority to award grants to achieve racial, religious, and sex discrimination “desegregation”)².

¹ 42 U.S.C. § 2000c-2000c-2, 2000c-5; 34 C.F.R. Part 270.

² See <https://www.govinfo.gov/content/pkg/FR-2016-04-01/pdf/2016-07459.pdf>.



Dramatically exceeding the original purpose of the program (providing technical assistance to successfully achieve and ensure desegregation), the revised regulations provided that “[s]ex desegregation” is a proper concern of the desegregation grant program and includes “the assignment of students to public schools and within those schools without regard to their sex (including transgender status; gender identity; sex stereotypes, such as treating a person differently because he or she does not conform to sex-role expectations because he or she is attracted to or is in a relationship with a person of the same sex; and pregnancy and related conditions), including providing students with a full opportunity for participation in all educational programs regardless of their sex.”³ Merits of “sex desegregation” aside, the race-based desegregation purposes of the Civil Rights Act of 1964 were clearly exceeded by the revised governing regulations.

In 2016, Secretary John King, Jr., noted the expansion beyond the original purpose of the DACs⁴ by describing EACs as “provid[ing] critical resources to districts and communities to ensure that our most vulnerable students have access to an equitable education.”⁵ Indeed, mission re-tooling (shifting from racial desegregation assistance to outcome-based “equity”) provided an entirely different framework to ED administrators in considering the award of sizable grants to support “social intervention, ideological re-education and economic redistribution” efforts.⁶ In fact, OESE now identifies the EAC performance goal as “support[ing] access and equity in public schools and help[ing] school districts solve equity problems in education related to race, sex, national origin, and religion.”⁷

Predictably, ED’s EAC grantee roster includes a number of entities primarily concerned with equity-focused, often racially-driven outcomes. In February 2017, one grantee, Indiana University’s “Great Lakes Equity Center⁸” (“GLEC”), published its 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 minimized, misrepresented or often omitted altogether.”⁹

³ 34 C.F.R. Part 270.20.

⁴ Bradley Scott, “From ‘DAC’ to ‘EAC’ – The Expanding Role of the Equity Assistance Center,” INTERCULTURAL DEVELOPMENT RESEARCH ASSOCIATION NEWSLETTER (February 1999), <https://www.idra.org/resource-center/from-aeoedacae-to-aeoeacae-the-expanding-role-of-the-equity-assistance-center/>.

⁵ See <https://maec.org/maec-announced-as-region-i-equity-assistance-center/>.

⁶ Charles Lipson, “‘Equity’ Is a Mandate to Discriminate,” WALL STREET JOURNAL (March 4, 2021), <https://www.wsj.com/articles/equity-is-a-mandate-to-discriminate-11614901276#:~:text=It's%20the%20difference%20between%20equal,biased%20competition%20and%20preferential%20judging.>

⁷ See <https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/training-and-advisory-services-equity-assistance-centers/performance-training-and-advisory-services-equity-assistance-centers/>.

⁸ See <https://greatlakesequity.org/anti-racism-resources>.

⁹ See <https://www.iyi.org/wp-content/uploads/2019/12/Handouts-Packet.pdf>.



GLEC’s “Center Statement” wastes no time in dividing American teachers by race:

“For those 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.

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.”¹⁰

By 2016, ED’s OESE had rewarded GLEC’s racial animus with nearly \$2.4 million in taxpayer-funded grants.¹¹

The “Mid-Atlantic Equity Consortium” (“MAEC”), another EAC grantee, established the Center for Education Equity (“CEE”) “to improve and sustain the systemic capacity of public education to increase outcomes for students regardless of race, gender, religion, and national origin.”¹² To “achieve educational equity,” it provides training in “equity-centered capacity building,” “collective impact,” and “equity-centered socioeconomic integration,” among other equity-driven approaches.¹³

In its “Bold Classroom Conversations: Let’s Talk About Racism!”, the CEE indicates that not discussing racism with students is not an option, that there isn’t a better place to discuss historical racism than 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!”¹⁴

By 2016, ED’s OESE rewarded MAEC’s racial, anti-parental invective with nearly \$3.8 million in taxpayer-funded grants.¹⁵

¹⁰ See <https://greatlakesequity.org/anti-racism-resources>.

¹¹ See <https://www2.ed.gov/programs/equitycenters/awards.html>.

¹² See <https://cee-maec.org/>.

¹³ See <https://cee-maec.org/what-we-do/>.

¹⁴ See <https://cee-maec.org/lets-talk-about-racism/>.

¹⁵ See <https://www2.ed.gov/programs/equitycenters/awards.html>.



Another EAC grantee, “The Education Alliance at Brown University,” offered resources that include “The Diversity Kit: An Introductory Resource for Social Change in Education” and “Standards, Equity and Cultural Diversity.”¹⁶ Now defunct, Brown’s “Education Alliance” received nearly \$2.4 million in EAC grants between 2002 and 2011.¹⁷

According to ED, the typical activities of EAC grant recipients should include “disseminating information on successful education practices and legal requirements related to nondiscrimination on the basis of race, sex, national origin, and religion in educational programs.”¹⁸ Yet the stated purposes of multiple grant recipients is facially hostile to certain races and others lacking in preferred “intersectionalities.” This suggests a lack of compliance by grantees, insufficient or improper ED guidance for grant applicants and recipients, or deficient oversight by the grantor (here, OESE).

ED has indicated that the reach of its EAC program throughout the country is already extensive (“[i]n FY 2020, EACs provided targeted and intensive assistance to 36 SEAs [State education agencies] and 196 LEAs [local education agencies] in 49 States and territories”¹⁹) and growing because of, among other factors, “recent increases in public interest in issues related to discrimination, and desegregation-related issues caused or exacerbated by the COVID-19 pandemic and conditions necessitated by it (*e.g.*, instances of online bullying related to race or ethnicity as a result of an increase in virtual instruction during the pandemic).”²⁰

The apparent purposes and activities of certain previous EAC grant recipients seem starkly counter to the historical purposes of Title IV of the Civil Rights Act of 1964. Previous recipients and other grant applicants are likely to apply for EAC grants again quite soon. On February 15, 2022, ED published a Notice Inviting Applications for 2022 EAC grant applications, due on May 16, 2022.²¹

The public has an interest in ED’s transparency regarding its past and present EAC grant funding operations, particularly since ED has solicited new grant applications and will presumably award EAC grants later this year. Therefore, DFI now seeks records related to the administration and oversight of the EACs funded by ED.

¹⁶ See

https://repository.library.brown.edu/studio/collections/1041/?selected_facets=keyword%3Aequity.

¹⁷ See <https://www2.ed.gov/programs/equitycenters/awards.html>.

¹⁸ See <https://www2.ed.gov/programs/equitycenters/index.html>.

¹⁹ See <https://www.federalregister.gov/documents/2022/02/15/2022-03208/applications-for-new-awards-equity-assistance-centers>.

²⁰ See *Id.*

²¹ See <https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/training-and-advisory-services-equity-assistance-centers/applicant-information-training-and-advisory-services-equity-assistance-centers/>.



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 request for records within your possession and/or control:

Requested Records

DFI requests that ED produce the following records within twenty (20) business days:

1. All non-deliberative communications of ED officials (see “Custodians” *infra*) within the Office of the Secretary, Office of the Deputy Secretary, Office for Civil Rights, Office of the General Counsel, Office of Communications and Outreach, Office of Legislation and Congressional Affairs, particularly communications sent by, copied to, or received by ED officials from January 1, 2015, through the date the search is conducted, which reference any of the following:
 - a. Equity Assistance Center, Equity Assistance Centers, EAC, or EACs
 - b. Desegregation Assistance Centers, Desegregation Centers, DAC, or DACs
 - c. 84.004D
 - d. Civil Rights Training and Advisory Service or Civil Rights Training and Advisory Services
 - e. 34 CFR 270
 - f. 42 USC 2000c
 - g. WestEd
 - h. Brown University – The Education Alliance Equity and Diversity Projects
 - i. Mid-Atlantic Equity Consortium
 - j. Intercultural Development Research Association
 - k. Kansas State University – College of Education, Dean of Education
 - l. Education Northwest
 - m. Southeastern Equity Alliance, Inc.
 - n. Touro College – School of Education, Lander Center for Education Research
 - o. Metropolitan State College of Denver
 - p. Indiana University – Great Lakes Equity Center
2. Each application received by ED for a program award grant (Program No. 84.004D), whether or not awarded, to fund “Equity Assistance Center(s)” or “Desegregation Assistance Center(s)” or “Training and Advisory Services,” authorized under title IV of the Civil Rights Act of 1964, 42. U.S.C. 2000c-2000c2, 2000c5, and 34 CFR part 270 for fiscal years 2016 (Federal Register Document Number 2016-16809, published July 18, 2016), 2017, 2018, 2019, 2020, 2021, through the present (Federal Register Document Number 2022-03208, published February 15, 2022) from July 18, 2016, through the date the search is conducted.
3. All records of ED officials (see “Custodians” *infra*) related to the receipt, evaluation, processing, and award or declination of award for each grant application identified in



- Item 2. “Records” should include but not be limited to electronic mail (“email”), texts, letters, memoranda, annual performance reports, and other documentation regarding applications received by ED from July 18, 2016, through the date the search is conducted.
4. Each cooperative agreement executed between ED/OESE and award grant recipient (*i.e.*, each entity to which an EAC grant was awarded) pursuant to the program described in Item 2, from July 18, 2016, through the date the search is conducted, including but not limited to the cooperative agreements (and any modifications or revisions to those agreements) with each of the following:
 - a. WestEd
 - b. Brown University – The Education Alliance Equity and Diversity Projects
 - c. Mid-Atlantic Equity Consortium
 - d. Intercultural Development Research Association
 - e. Kansas State University – College of Education, Dean of Education
 - f. Education Northwest
 - g. Southeastern Equity Alliance, Inc.
 - h. Touro College – School of Education, Lander Center for Education Research
 - i. Metropolitan State College of Denver
 - j. Indiana University – Great Lakes Equity Center
 5. All records of ED officials (see “Custodians” *infra*), including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation, which provided the evidentiary basis (and sources of such evidentiary basis) upon which ED relied in its Funding Opportunity Description, published in the Federal Register on February 15, 2022 (Document Number 2022-03208), indicating that “instances of online bullying related to race or ethnicity as a result of an increase in virtual instruction during the pandemic” had occurred, from January 20, 2021, through the date the search is conducted.
 6. All non-deliberative communications of ED officials (see “Custodians” *infra*), (particularly communications sent by, copied to, or received by ED officials within the Office of the Secretary, Office of the Deputy Secretary, Office for Civil Rights, Office of the General Counsel, Office of Communications and Outreach, Office of Legislation and Congressional Affairs), from January 20, 2021, through the date the search is conducted, which reference:
 - a. Withdrawal of Notice Inviting Applications and Cancellation of the Competition for the Equity Assistance Centers Program
 - b. 86 CFR 2653
 - c. Assistance Listing number 84.004D
 - d. 84.004D



Custodians

The search for records described in Item 1 should be limited to “ED officials” employed in each of the following appointment categories:

- a. “PAS” (Presidential Appointments Requiring Senate Confirmation)
- b. “PA” (Presidential Appointments Not Requiring Senate Confirmation)
- c. “NC-SES” (Non-Career Senior Executive Service)
- d. “SES” (Career Senior Executive Service)
- e. “SC” (Schedule C Confidential or Policymaking Positions)
- f. Director, Program and Grantee Support Services, Office of Elementary and Secondary Education
- g. Group Leader, Program and Grantee Support Services, Office of Elementary and Secondary Education
- h. Any employee or contractor assigned to Program and Grantee Support Services, Office of Elementary and Secondary Education

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 requestor²² 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.”²³ Upon

²² 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).

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



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

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.²⁹

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

²⁴ 5 U.S.C. § 552(a)(3)(A).

²⁵ *Id.* at 144.

²⁶ 5 U.S.C. § 552(a)(3)(A)(i).

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

²⁸ 5 U.S.C. § 552(a)(3)(B).

²⁹ 5 U.S.C. § 552(a)(6)(A)(i).



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"³⁰ 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.

³⁰ *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 ED's Title IV Equity Assistance Center policies, which policies are highly relevant to students, faculty, and taxpayers. Disclosure of the requested materials will illuminate ED's Title IV grant award policies for its Equity Assistance Centers. 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 and more recently, a March 2022 analysis of DOJ policies distributed by a leading news magazine. DFI personnel have also offered commentary and analyses on radio 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.”³¹ 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 distributed by a leading news magazine. DFI personnel have also offered commentary and analyses on radio news programs and in various 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 identifiable operations and activities of ED and, more specifically, the award of grants for ED’s Equity Assistance Centers. Provision of the requested records will meaningfully inform the general public about significant developments in ED’s civil rights policies affecting students, parents, teachers, faculty, and the public. As noted above, previous grant recipients appear to be engaged in racial animus towards teachers with a particular racial background. Discriminatory practices by ED’s EAC “equity” partners, subsidized by taxpayer dollars, present significant 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 ED’s equity-related grant-making policies, which impact students, parents, teachers, faculty, and the public.

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



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.

Sincerely yours,

/s/ Paul R. Moore

Paul R. Moore, Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.

Exhibit A-2

Department's March 29, 2022
FOIA Acknowledgement Letter



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

FOIA Service Center

March 29, 2022

Mr. Paul R Moore
Senior Counsel
Defense of Freedom Institute for Policy Studies
1455 Pennsylvania Ave NW
Suite 400
Washington, DC 20004

RE: FOIA Request No. - 22-02360-F

Dear: Paul R Moore

This is in response to your letter dated March 28, 2022, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on March 29, 2022, and forwarded to the primary responsible office(s) for action.

You requested: 1. All non-deliberative communications of ED officials (see “Custodians” infra) within the Office of the Secretary, Office of the Deputy Secretary, Office for Civil Rights, Office of the General Counsel, Office of Communications and Outreach, Office of Legislation and Congressional Affairs, particularly communications sent by, copied to, or received by ED officials from January 1, 2015, through the date the search is conducted, which reference any of the following:

- a. Equity Assistance Center, Equity Assistance Centers, EAC, or EACs
- b. Desegregation Assistance Centers, Desegregation Centers, DAC, or DACs
- c. 84.004D
- d. Civil Rights Training and Advisory Service or Civil Rights Training and Advisory Services
- e. 34 CFR 270
- f. 42 USC 2000c
- g. WestEd
- h. Brown University – The Education Alliance Equity and Diversity Projects
- i. Mid-Atlantic Equity Consortium
- j. Intercultural Development Research Association
- k. Kansas State University – College of Education, Dean of Education
- l. Education Northwest
- m. Southeastern Equity Alliance, Inc.
- n. Touro College – School of Education, Lander Center for Education Research
- o. Metropolitan State College of Denver

Page 2 of 2 – Paul R Moore
No. 22-02360-F

p. Indiana University – Great Lakes Equity Center

2. Each application received by ED for a program award grant (Program No. 84.004D), whether or not awarded, to fund “Equity Assistance Center(s)” or “Desegregation Assistance Center(s)” or “Training and Advisory Services,” authorized under title IV of the Civil Rights Act of 1964, 42. U.S.C. 2000c-2000c2, 2000c5, and 34 CFR part 270 for fiscal years 2016 (Federal Register Document Number 2016-16809, published July 18, 2016), 2017, 2018, 2019, 2020, 2021, through the present (Federal Register Document Number 2022-03208, published February 15, 2022) from July 18, 2016, through the date the search is conducted.

3. All records of ED officials (see “Custodians” infra) related to the receipt, evaluation, processing, and award or declination of award for each grant application identified in Item 2. “Records” should include but not be limited to electronic mail (“email”), texts, letters, memoranda, annual performance reports, and other documentation regarding applications received by ED from July 18, 2016, through the date the search is conducted. SEE REQUEST DESCRIPTION for additional info.....

Please refer to the FOIA tracking number to check the status of your FOIA request at the link provided below:

<https://foiaexpress.pal.ed.gov/app/CheckStatus.aspx>

For any future correspondence, status updates or questions regarding your request, please contact the FOIA Public Liaison via email to EDFOIAManager@ed.gov

Sincerely,

ED FOIA Manager
Office of the Executive Secretariat

Exhibit A-3

Department's April 26, 2022 20-Day
Status Notification



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

FOIA Service Center

April 26, 2022

Mr. Paul R Moore
 Senior Counsel
 Defense of Freedom Institute for Policy Studies
 1455 Pennsylvania Ave NW
 Suite 400
 Washington, DC 20004

RE: 20 –DAY NOTIFICATION 22-02360-F

Dear Paul R Moore:

This is the Department of Education’s (the Department) initial determination letter to your request dated, March 28, 2022, seeking information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was forwarded to the appropriate office(s) within the Department for any responsive documents they may have.

Due to the unusual circumstances that exist with your FOIA requests as defined by U.S.C. § 552(a)(6)(B)(i)(ii), the Department will not be able to respond by the 20 day statutory requirement. The scope of your FOIA requests requires the Department to conduct a vast search across multiple program offices, which we anticipate will result in a large amount of responsive records.

You can check on the status of your FOIA request at the link provided below:

<https://foiexpress.pal.ed.gov/app/CheckStatus.aspx>

You have the right to seek assistance and/or dispute resolution services from the Department’s FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA Public Liaison is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

They can be contacted by:

Mail	FOIA Public Liaison Office of the Executive Secretariat U.S. Department of Education 400 Maryland Ave., SW, LBJ 7C132 Washington, DC 20202-4500	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road College Park, MD 20740-6001
E-mail	robert.wehausen@ed.gov	OGIS@nara.gov
Phone	202-205-0733	202-741-5770; toll free at 1-877-684-6448
Fax	202-401-0920	202-741-5769

Sincerely

ED FOIA Manager
 FOIA Service Center
 U.S. Department of Education

Exhibit A-4
June 14, 2022 Production
Request Inquiry



Paul Moore <paul.moore@dfipolicy.org>

Status of Particular FOIA Requests

Paul Moore <paul.moore@dfipolicy.org>
To: "Moore, Deborah" <Deborah.Moore@ed.gov>

Tue, Jun 14, 2022 at 11:55 AM

Hi Deborah,

I wanted to check on the production timetable for three particular FOIA requests (as mentioned in our recent conference call), as these requests involved relatively specific records. Here are the FOIA requests:

22-02358-F OESE Record Related to Equity Assistance Center (20 day notification letter issued April 26, 2022) (FOIA request submitted March 28, 2022)

22-02360-F ED Records Related to Equity Assistance Centers (20 day notification letter issued April 26, 2022) (FOIA request submitted March 28, 2022)

22-02728-F OGC DGC Toby Merrill's Ethics Pledge, Pledge Waivers, Conflict Materials ("in process" indicated on May 12, 2022) (FOIA request submitted May 11, 2022)

Many thanks,

Paul Moore



Paul R. Moore, Senior Counsel
Defense of Freedom Institute for Policy Studies
1455 Pennsylvania Avenue, NW, Suite 400
Washington, DC 20004
(617) 901-8343
paul.moore@dfipolicy.org
www.dfipolicy.org

Exhibit A-5
Department's June 15, 2022
Response to Production
Request Inquiry



Paul Moore <paul.moore@dfipolicy.org>

Status of Particular FOIA Requests

Moore, Deborah <Deborah.Moore@ed.gov>
To: Paul Moore <paul.moore@dfipolicy.org>
Cc: "Smith, Gregory" <Gregory.Smith@ed.gov>

Wed, Jun 15, 2022 at 2:27 PM

Hi, Paul

Thanks for reaching out. I've copied Greg Smith, Director of the FOIA Service Center, here because he's shepherding DFI request. Your timing is great because I was actually hoping to touch base with you on DFI's availability for a call with our SMEs on the EAC-related requests. But let me update you on the specific requests you asked about first:

22-02358-F OESE Records Related to Equity Assistance Centers (20 day notification letter issued April 26, 2022) (FOIA request submitted March 28, 2022): OESE continues its search for responsive documents for several elements of this requests, and I'd estimate end of July for interim release of those discrete items not requiring and admin search, but of course we will do interim for document as they become available. Timing of the element requiring admin search will depend on the timing of the meeting with DFI.

22-02360-F ED Records Related to Equity Assistance Centers (20 day notification letter issued April 26, 2022) (FOIA request submitted March 28, 2022): Similar to the above, OESE is working on the non-administrative search elements (e.g., #2 and #4), and I'd estimate the same end of July timeframe. The other elements will involve admin search and so will follow our meeting with you

22-02728-F OGC DGC Toby Merrill' Ethic Pledge, Pledge Waiver, Conflict Material ("in process" indicated on May 12, 2022) (FOIA request submitted May 11, 2022): On this one we are closer to release to you, and I'd estimate July 5, if not sooner.

Regarding scheduling a scoping meeting, we've identified relevant SMEs in the POCs for the two EAC-related requests above as well as 22-02610-F and are executing a data call for question they have on the request so we better understand what you're looking for, as well as suggestions for shaping the request to elicit responsive docs meeting what you need. We plan to meet with them in the next two weeks and would like to then meet with you, the SMEs, and the admin search experts the first week of July. Do you/your team have availability July 5, 6, 7 or 8? If you can let me know what window you have open on those days, I can work toward getting the folks on that end lined up

Does that work?

Thank,
Deborah

From: Paul Moore <paul.moore@dfipolicy.org>
Sent: Tuesday, June 14, 2022 12:56 PM
To: Moore, Deborah <Deborah.Moore@ed.gov>
Subject: Status of Particular FOIA Requests

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Deborah,

I wanted to check on the production timetable for three particular FOIA requests (as mentioned in our recent conference call), as these requests involved relatively specific records. Here are the FOIA requests:

22-02358-F OESE Records Related to Equity Assistance Centers (20 day notification letter issued April 26, 2022) (FOIA request submitted March 28, 2022)

22-02360-F ED Records Related to Equity Assistance Centers (20 day notification letter issued April 26, 2022) (FOIA request submitted March 28, 2022)

22-02728-F OGC DGC Toby Merrill's Ethics Pledge, Pledge Waivers, Conflict Materials ("in process" indicated on May 12, 2022) (FOIA request submitted May 11, 2022)

Many thanks,

Paul Moore

[Redacted signature]

[Quoted text hidden]

Exhibit A-6
Department's July 18, 2022
Proposed Narrowing of
Initial Records Search



Paul Moore <paul.moore@dfipolicy.org>

Follow up on ED FOIA requests 22-02360 and 22-02358-F

Moore, Deborah <Deborah.Moore@ed.gov> Mon, Jul 18, 2022 at 4:06 PM
To: Paul Moore <paul.moore@dfipolicy.org>, Paul Zimmerman <paul.zimmerman@dfipolicy.org>
Cc: "Smith, Gregory" <Gregory.Smith@ed.gov>

DFI colleagues,

Thank you again for meeting with us on 7/7/2022 on three of DFI's request to ED to better understand your intent and interest and hope the request to more definitively and comprehensively get you the record you would like. Also thank you to your speedy response to our proposed approach for 22-02610-F, which we received on 7/13/2022. As promised, ED subject-matter and admin-search experts have convened to determine, based on our 7/7/2022 discussion, how to structure the searches. Below please find the plan, starting with two aspects that would apply to both subject requests, 22-02360 and 22-02358-F, followed by specific elements of 22-02360-F.

Please let us know if this plan is acceptable or if you have any concerns or questions. If you can get back to us with your response by 7/22/2022, that would be helpful. Please let me know if you need more time.

Thank you!

Deborah

1. 22-02360 and 22-02358-F

- DFI would like both previous (2011) and current (2016) cohorts but would like to prioritize current cohort
- For Element 1: Terms: for g-p combine term with AND EAC

2. 22-02360

Element 1

- Custodians: Political appointees only; plus f, g, and h:
 - Director, Program and Grantee Support Services, Office of Elementary and Secondary Education
 - g. Group Leader, Program and Grantee Support Services, Office of Elementary and Secondary Education
 - h. Any employee or contractor assigned to Program and Grantee Support Services, Office of Elementary and Secondary Education
- Dates: January 1, 2015 to present
- Terms:

"Equity Alliance Center" EAC EAC 84 004D "Training and Advisory Services"	AND NEAR	34 CFR 270 Title IV We tEd Brown University The Education Alliance Equity and Diversity Projects Mid-Atlantic Equity Consortium or MAEC or CEE Intercultural Development Research Association or IDRA Kansas State University – College of Education, Dean of Education
---	-------------	---

		Education Northwest Southeastern Equity Alliance, Inc. Touro College – School of Education, Lander Center for Education Research Metropolitan State College of Denver or WEEAC Indiana University – Great Lakes Equity Center or MAP Center or GLEC
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Element 4

- The Department will provide the Cooperative agreements for the four EACs in the 2016 cohort.
- NOTE: Cooperative agreements are typically issued once for each cohort, and are not updated annually.

Element 6

- Custodians: Political appointees only; plus f, g, and h:
 - Director, Program and Grantee Support Services, Office of Elementary and Secondary Education
 - g. Group Leader, Program and Grantee Support Services, Office of Elementary and Secondary Education
 - h. Any employee or contractor assigned to Program and Grantee Support Services, Office of Elementary and Secondary Education
- Dates: January 20, 2021 to present
- Terms:

“Withdrawal of Notice Inviting Applications and Cancellation of the Competition for the Equity Assistance Centers Program” “Withdrawal notice” or “cancellation notice” 86 CFR 2653	AND NEAR	84.004D
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Exhibit A-7
July 19, 2022 Response to
Department's Proposed
Narrowing of Initial Records
Search

Paul Moore <paul.moore@dfipolicy.org>

Follow up on ED FOIA requests 22-02360 and 22-02358-F

Paul Moore <paul.moore@dfipolicy.org>

Tue, Jul 19, 2022 at 9:14 AM

To: "Moore, Deborah" <Deborah.Moore@ed.gov>

Cc: Paul Zimmerman <paul.zimmerman@dfipolicy.org>, "Smith, Gregory" <Gregory.Smith@ed.gov>

Thank you, Deborah.

I think that this accurately reflects our discussion and efforts to begin production of the requested records. As mentioned in the discussion, the cooperative agreements should be easily accessed (and there are very few of them), so it is DF's hope that those would be produced quickly at this point.

Thanks, again!

Paul

[Quoted text hidden]

Exhibit A-8
July 28, 2022
Production Request Inquiry



Paul Moore <paul.moore@dfipolicy.org>

Follow up on ED FOIA requests 22-02360 and 22-02358-F

Paul Moore <paul.moore@dfipolicy.org>

Thu, Jul 28, 2022 at 9:53 AM

To: "Moore, Deborah" <Deborah.Moore@ed.gov>

Cc: Paul Zimmerman <paul.zimmerman@dfipolicy.org>, "Smith, Gregory" <Gregory.Smith@ed.gov>

Good morning, Deborah

I hope this finds you well. Wanted to check on the status of these records (particularly the Cooperative Agreements, as they are relatively discrete records should be more easily provided).

Thanks very much!

Paul

On Mon, Jul 18, 2022 at 5 06 PM Moore, Deborah [Deborah Moore@ed.gov](mailto:Deborah.Moore@ed.gov) wrote

[Quoted text hidden]

Exhibit A-9
Department's July 28, 2022
Response to Production
Request Inquiry



Paul Moore <paul.moore@dfipolicy.org>

Follow up on ED FOIA requests 22-02360 and 22-02358-F

Moore, Deborah <Deborah.Moore@ed.gov> Thu, Jul 28, 2022 at 1:24 PM
To: Paul Moore <paul.moore@dfipolicy.org>
Cc: Paul Zimmerman <paul.zimmerman@dfipolicy.org>, "Smith, Gregory" <Gregory.Smith@ed.gov>

Good afternoon, Paul.

Thanks for reaching out. Regarding the status of your requests, including the cooperative agreements, we are working with the program office and SME to obtain any responsive records so that we can get them to you as soon as possible.

I appreciate your understanding and continued patience as we work through these requests.

Best,

Deborah

From: Paul Moore <paul.moore@dfipolicy.org>
Sent: Thursday, July 28, 2022 10:54 AM
To: Moore, Deborah <Deborah.Moore@ed.gov>
Cc: Paul Zimmerman <paul.zimmerman@dfipolicy.org>; Smith, Gregory <Gregory.Smith@ed.gov>
Subject: Re: Follow up on ED FOIA requests 22-02360 and 22-02358-F

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Good morning, Deborah.

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

- o Director, Program and Grantee Support Services, Office of Elementary and Secondary Education
- o g. Group Leader, Program and Grantee Support Services, Office of Elementary and Secondary Education
- o h. Any employee or contractor assigned to Program and Grantee Support Services, Office of Elementary and Secondary Education

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Exhibit A-10
August 22, 2022
Production Request Inquiry



Paul Moore <paul.moore@dfipolicy.org>

Follow up on ED FOIA requests 22-02360 and 22-02358-F

Paul Moore <paul.moore@dfipolicy.org>

Mon, Aug 22, 2022 at 9:18 AM

To: "Moore, Deborah" <Deborah.Moore@ed.gov>

Cc: Paul Zimmerman <paul.zimmerman@dfipolicy.org>, "Smith, Gregory" <Gregory.Smith@ed.gov>

Good morning, Deborah,

Can you please update me on the status of the production of the Equity Assistance Center cooperative agreements?

The e are among the mo t di crete, readily identifiable (and producible) record that ED control

DFI submitted its FOIA request for these records to ED on March 28, 2022.

DFI ha worked with ED to identify uch record and had e pected that production would have occurred quite ome time ago.

Thanks for your assistance!

Sincerely,
Paul Moore

On Mon, Jul 18, 2022 at 5 06 PM Moore, Deborah [Deborah Moore@ed.gov](mailto:Deborah.Moore@ed.gov) wrote

[Quoted text hidden]

Exhibit A-11
Department's August 22, 2022
Response to Production
Request Inquiry



Paul Moore <paul.moore@dfipolicy.org>

Follow up on ED FOIA requests 22-02360 and 22-02358-F

Smith, Gregory <Gregory.Smith@ed.gov> Mon, Aug 22, 2022 at 5:30 PM
To: Paul Moore <paul.moore@dfipolicy.org>, "Moore, Deborah" <Deborah.Moore@ed.gov>
Cc: Paul Zimmerman <paul.zimmerman@dfipolicy.org>

Dear Paul R Moore,

Deborah is currently out of the office. So, I am acknowledging and responding to your inquiry. The Department has continued proceeding effort at the POC and administrative level to search for and review record potentially responsive to FOIA requests 22-02360-F and 22-02358-F.

We regret that we have not been able to provide definitive date up to this point; however, we hope to respond to select elements soon.

We appreciate your/DFI' continued patience as the Department proceeds the request

Sincerely,

Gregory A. Smith

Director, FOIA Service Center

Office of the Secretary

U.S. Department of Education

400 Maryland Avenue, SW, Room 7W104

Washington, DC 20202

Office: (202) 453-6362

Email [Gregory Smith@ed.gov](mailto:Gregory.Smith@ed.gov)

From: Paul Moore <paul.moore@dfipolicy.org>
Sent: Monday, August 22, 2022 10:19 AM
To: Moore, Deborah <Deborah.Moore@ed.gov>
Cc: Paul Zimmerman paul.zimmerman@dfipolicy.org ; Smith, Gregory [Gregory Smith@ed.gov](mailto:Gregory.Smith@ed.gov)
Subject: Re: Follow up on ED FOIA requests 22-02360 and 22-02358-F

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Good morning, Deborah,

[Quoted text hidden]

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- Director, Program and Grantee Support Services, Office of Elementary and Secondary Education
- g. Group Leader, Program and Grantee Support Services, Office of Elementary and Secondary Education
- h. Any employee or contractor assigned to Program and Grantee Support Services, Office of Elementary and Secondary Education

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Exhibit B-1
March 28, 2022 OESE FOIA
Request



March 28, 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: OESE Records Related to Equity Assistance Centers
(DFI FOIA No. 100-9-22)

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. 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.

Pursuant to Title IV of the Civil Rights Act of 1964 (“Desegregation of Public Education”), the U.S. Department of Education (“ED”) is authorized to “render technical assistance” through grants awarded to applicants which assist school boards and other responsible governmental agencies in the “preparation, adoption, and implementation of plans for the desegregation of public schools.”¹ “Desegregation Assistance Centers” (“DAC”) were established and funded by ED to render technical assistance for the explicit purpose of desegregating schools, in compliance with the Civil Rights Act of 1964.

In 2016, ED’s Office of Elementary and Secondary Education (“OESE”) changed the name of the DACs to “Equity Assistance Centers” (“EAC”), indicating a broader scope of permitted “equity” interests well beyond providing technical assistance for implementing successful desegregation plans - and a considerably wider scope of potential grant application eligibility. ED issued new regulations which effectively diluted the original purpose of the DACs (*e.g.*, to “increase socioeconomic diversity” and permitting the Secretary of Education wider authority to award grants to achieve racial, religious, and sex discrimination “desegregation”)².

¹ 42 U.S.C. § 2000c-2000c-2, 2000c-5; 34 C.F.R. Part 270.

² See <https://www.govinfo.gov/content/pkg/FR-2016-04-01/pdf/2016-07459.pdf>.



Dramatically exceeding the original purpose of the program (providing technical assistance to successfully achieve and ensure desegregation), the revised regulations provided that “[s]ex desegregation” is a proper concern of the desegregation grant program and includes “the assignment of students to public schools and within those schools without regard to their sex (including transgender status; gender identity; sex stereotypes, such as treating a person differently because he or she does not conform to sex-role expectations because he or she is attracted to or is in a relationship with a person of the same sex; and pregnancy and related conditions), including providing students with a full opportunity for participation in all educational programs regardless of their sex.”³ Merits of “sex desegregation” aside, the race-based desegregation purposes of the Civil Rights Act of 1964 were clearly exceeded by the revised governing regulations.

In 2016, Secretary John King, Jr., noted the expansion beyond the original purpose of the DACs⁴ by describing EACs as “provid[ing] critical resources to districts and communities to ensure that our most vulnerable students have access to an equitable education.”⁵ Indeed, mission re-tooling (shifting from racial desegregation assistance to outcome-based “equity”) provided an entirely different framework to ED administrators in considering the award of sizable grants to support “social intervention, ideological re-education and economic redistribution” efforts.⁶ In fact, OESE now identifies the EAC performance goal as “support[ing] access and equity in public schools and help[ing] school districts solve equity problems in education related to race, sex, national origin, and religion.”⁷

Predictably, ED’s EAC grantee roster includes a number of entities primarily concerned with equity-focused, often racially-driven outcomes. In February 2017, one grantee, Indiana University’s “Great Lakes Equity Center⁸” (“GLEC”), published its 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 minimized, misrepresented or often omitted altogether.”⁹

³ 34 C.F.R. Part 270.20.

⁴ Bradley Scott, “From ‘DAC’ to ‘EAC’ – The Expanding Role of the Equity Assistance Center,” INTERCULTURAL DEVELOPMENT RESEARCH ASSOCIATION NEWSLETTER (February 1999), <https://www.idra.org/resource-center/from-aeoedacae-to-aeoeacae-the-expanding-role-of-the-equity-assistance-center/>.

⁵ See <https://maec.org/maec-announced-as-region-i-equity-assistance-center/>.

⁶ Charles Lipson, “‘Equity’ Is a Mandate to Discriminate,” WALL STREET JOURNAL (March 4, 2021), <https://www.wsj.com/articles/equity-is-a-mandate-to-discriminate-11614901276#:~:text=It's%20the%20difference%20between%20equal,baised%20competition%20and%20preferential%20judging.>

⁷ See <https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/training-and-advisory-services-equity-assistance-centers/performance-training-and-advisory-services-equity-assistance-centers/>.

⁸ See <https://greatlakesequity.org/anti-racism-resources>.

⁹ See <https://www.iyi.org/wp-content/uploads/2019/12/Handouts-Packet.pdf>.



GLEC’s “Center Statement” wastes no time in dividing American teachers by race:

“For those 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.

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.”¹⁰

By 2016, ED’s OESE had rewarded GLEC’s racial animus with nearly \$2.4 million in taxpayer-funded grants.¹¹

The “Mid-Atlantic Equity Consortium” (“MAEC”), another EAC grantee, established the Center for Education Equity (“CEE”) “to improve and sustain the systemic capacity of public education to increase outcomes for students regardless of race, gender, religion, and national origin.”¹² To “achieve educational equity,” it provides training in “equity-centered capacity building,” “collective impact,” and “equity-centered socioeconomic integration,” among other equity-driven approaches.¹³

In its “Bold Classroom Conversations: Let’s Talk About Racism!”, the CEE indicates that not discussing racism with students is not an option, that there isn’t a better place to discuss historical racism than 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!”¹⁴

By 2016, ED’s OESE rewarded MAEC’s racial, anti-parental invective with nearly \$3.8 million in taxpayer-funded grants.¹⁵

¹⁰ See <https://greatlakesequity.org/anti-racism-resources>.

¹¹ See <https://www2.ed.gov/programs/equitycenters/awards.html>.

¹² See <https://cee-maec.org/>.

¹³ See <https://cee-maec.org/what-we-do/>.

¹⁴ See <https://cee-maec.org/lets-talk-about-racism/>.

¹⁵ See <https://www2.ed.gov/programs/equitycenters/awards.html>.



Another EAC grantee, “The Education Alliance at Brown University,” offered resources that include “The Diversity Kit: An Introductory Resource for Social Change in Education” and “Standards, Equity and Cultural Diversity.”¹⁶ Now defunct, Brown’s “Education Alliance” received nearly \$2.4 million in EAC grants between 2002 and 2011.¹⁷

According to ED, the typical activities of EAC grant recipients should include “disseminating information on successful education practices and legal requirements related to nondiscrimination on the basis of race, sex, national origin, and religion in educational programs.”¹⁸ Yet the stated purposes of multiple grant recipients is facially hostile to certain races and others lacking in preferred “intersectionalities.” This suggests a lack of compliance by grantees, insufficient or improper ED guidance for grant applicants and recipients, or deficient oversight by the grantor (here, OESE).

ED has indicated that the reach of its EAC program throughout the country is already extensive (“[i]n FY 2020, EACs provided targeted and intensive assistance to 36 SEAs [State education agencies] and 196 LEAs [local education agencies] in 49 States and territories”¹⁹) and growing because of, among other factors, “recent increases in public interest in issues related to discrimination, and desegregation-related issues caused or exacerbated by the COVID-19 pandemic and conditions necessitated by it (*e.g.*, instances of online bullying related to race or ethnicity as a result of an increase in virtual instruction during the pandemic).”²⁰

The apparent purposes and activities of certain previous EAC grant recipients seem starkly counter to the historical purposes of Title IV of the Civil Rights Act of 1964. Previous recipients and other grant applicants are likely to apply for EAC grants again quite soon. On February 15, 2022, ED published a Notice Inviting Applications for 2022 EAC grant applications, due on May 16, 2022.²¹

The public has an interest in ED’s transparency regarding its past and present EAC grant funding operations, particularly since ED has solicited new grant applications and will presumably award EAC grants later this year. Therefore, DFI now seeks records related to the administration and oversight of the EACs funded by ED.

¹⁶See

https://repository.library.brown.edu/studio/collections/1041/?selected_facets=keyword%3Aequity.

¹⁷ See <https://www2.ed.gov/programs/equitycenters/awards.html>.

¹⁸ See <https://www2.ed.gov/programs/equitycenters/index.html>.

¹⁹ See <https://www.federalregister.gov/documents/2022/02/15/2022-03208/applications-for-new-awards-equity-assistance-centers>.

²⁰ See *Id.*

²¹ See <https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/training-and-advisory-services-equity-assistance-centers/applicant-information-training-and-advisory-services-equity-assistance-centers/>.



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 request for records within your possession and/or control:

Requested Records

DFI requests that ED produce the following records within twenty (20) business days:

1. All non-deliberative communications of ED officials (see “Custodians” *infra*) within the Office of Elementary and Secondary Education (“OESE”), particularly communications sent by, copied to, or received by ED OESE officials from January 1, 2015, through the date the search is conducted, which reference any of the following:
 - a. Equity Assistance Center, Equity Assistance Centers, EAC, or EACs
 - b. Desegregation Assistance Centers, Desegregation Centers, DAC, or DACs
 - c. 84.004D
 - d. Civil Rights Training and Advisory Service or Civil Rights Training and Advisory Services
 - e. 34 CFR 270
 - f. 42 USC 2000c
 - g. WestEd
 - h. Brown University – The Education Alliance Equity and Diversity Projects
 - i. Mid-Atlantic Equity Consortium
 - j. Intercultural Development Research Association
 - k. Kansas State University – College of Education, Dean of Education
 - l. Education Northwest
 - m. Southeastern Equity Alliance, Inc.
 - n. Touro College – School of Education, Lander Center for Education Research
 - o. Metropolitan State College of Denver
 - p. Indiana University – Great Lakes Equity Center
2. Each application received by ED for a program award grant (Program No. 84.004D), whether or not awarded, to fund “Equity Assistance Center(s)” or “Desegregation Assistance Center(s)” or “Training and Advisory Services,” authorized under title IV of the Civil Rights Act of 1964, 42. U.S.C. 2000c-2000c2, 2000c5, and 34 CFR part 270 for fiscal years 2016 (Federal Register Document Number 2016-16809, published July 18, 2016), 2017, 2018, 2019, 2020, 2021, through the present (Federal Register Document Number 2022-03208, published February 15, 2022) from July 18, 2016, through the date the search is conducted.
3. All records of ED officials (see “Custodians” *infra*) related to the receipt, evaluation, processing, and award or declination of award for each grant application identified in Item 2. “Records” should include but not be limited to electronic mail (“email”), texts, letters, memoranda, annual performance reports, and other documentation regarding



- applications received by ED from July 18, 2016, through the date the search is conducted.
4. Each cooperative agreement executed between ED/OESE and award grant recipient (*i.e.*, each entity to which an EAC grant was awarded) pursuant to the program described in Item 2, from July 18, 2016, through the date the search is conducted, including but not limited to the cooperative agreements (and any modifications or revisions to those agreements) with each of the following:
 - a. WestEd
 - b. Brown University – The Education Alliance Equity and Diversity Projects
 - c. Mid-Atlantic Equity Consortium
 - d. Intercultural Development Research Association
 - e. Kansas State University – College of Education, Dean of Education
 - f. Education Northwest
 - g. Southeastern Equity Alliance, Inc.
 - h. Touro College – School of Education, Lander Center for Education Research
 - i. Metropolitan State College of Denver
 - j. Indiana University – Great Lakes Equity Center
 5. All records of ED officials (see “Custodians” *infra*), including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation, which provided the evidentiary basis (and sources of such evidentiary basis) upon which ED relied in its Funding Opportunity Description, published in the Federal Register on February 15, 2022 (Document Number 2022-03208), indicating that “instances of online bullying related to race or ethnicity as a result of an increase in virtual instruction during the pandemic” had occurred, from January 20, 2021, through the date the search is conducted.
 6. All non-deliberative communications of ED officials (see “Custodians” *infra*) within OESE from November 3, 2020, through the date the search is conducted, which reference:
 - a. Withdrawal of Notice Inviting Applications and Cancellation of the Competition for the Equity Assistance Centers Program
 - b. 86 CFR 2653
 - c. Assistance Listing number 84.004D
 - d. 84.004D
 7. A list of the 36 State educational agencies (“SEAs”), 196 local educational agencies (“LEAs”), and 277 schools in 49 states and territories receiving targeted and intensive assistance from Equity Assistance Centers in fiscal year 2020, as stated on page C-48 of the document entitled “School Improvement Programs” accessible on ED’s [website](#).



8. All documents identifying the Midwestern state and the EAC that “helped to change the way nearly 330,000 elementary, middle, and high school students learn social studies,” as stated on page C-49 of the document entitled “School Improvements Programs” accessible on ED’s [website](#).

Custodians

The search for records described in Item 1 should be limited to “ED officials” employed in each of the following appointment categories:

- a. “PAS” (Presidential Appointments Requiring Senate Confirmation)
- b. “PA” (Presidential Appointments Not Requiring Senate Confirmation)
- c. “NC-SES” (Non-Career Senior Executive Service)
- d. “SES” (Career Senior Executive Service)
- e. “SC” (Schedule C Confidential or Policymaking Positions)
- f. Director, Program and Grantee Support Services, Office of Elementary and Secondary Education
- g. Group Leader, Program and Grantee Support Services, Office of Elementary and Secondary Education
- h. Any employee or contractor assigned to Program and Grantee Support Services, Office of Elementary and Secondary Education

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 requestor²² 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.”²³ Upon request, ED must “promptly” make the requested records available to the requester.²⁴ Notably, covered agency records include materials provided to ED by both private and governmental organizations.²⁵ 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,²⁶ ED must conduct a search calculated to find responsive records in ED’s control at the time of the request.²⁷ 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.”²⁸

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.²⁹

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

²² 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).

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

²⁴ 5 U.S.C. § 552(a)(3)(A).

²⁵ *Id.* at 144.

²⁶ 5 U.S.C. § 552(a)(3)(A)(i).

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

²⁸ 5 U.S.C. § 552(a)(3)(B).

²⁹ 5 U.S.C. § 552(a)(6)(A)(i).



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 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"³⁰ and provide a sufficiently detailed justification and rationale for each non-disclosure and the statutory exemption upon which the non-disclosure relies.

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



- 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.

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 ED's Title IV Equity Assistance Center policies, which policies are highly relevant to students, faculty, and taxpayers. Disclosure of the requested materials will illuminate ED's Title IV grant award policies for its Equity Assistance Centers. 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 and more recently, a March 2022 analysis of DOJ policies distributed by a leading news magazine. DFI personnel have also offered commentary and analyses on radio 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.”³¹ 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 distributed by a leading news magazine. DFI personnel have also offered commentary and analyses on radio news programs and in various 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 identifiable operations and activities of ED and, more specifically, the award of grants for ED’s Equity Assistance Centers. Provision of the requested records will meaningfully inform the general public about significant developments in ED’s civil rights policies affecting students, parents, teachers, faculty, and the public. As noted above, previous grant recipients appear to be engaged in racial animus towards teachers with a particular racial background. Discriminatory practices by ED’s EAC “equity” partners, subsidized by taxpayer dollars, present significant 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

³¹ 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 ED's equity-related grant-making policies, which impact students, parents, teachers, faculty, and the public.

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.

Sincerely yours,

/s/ Paul R. Moore

Paul R. Moore, Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.

Exhibit B-2
March 29, 2022 FOIA Request
Acknowledgment Letter



Paul Moore <paul.moore@dfipolicy.org>

Request Acknowledgement by Department of Education

3 messages

EDFOIManager@ed.gov <EDFOIManager@ed.gov>
To: paul.moore@dfipolicy.org

Tue, Mar 29, 2022 at 3:25 PM

Dear Paul Moore,

Your request has been received by the Department of Education and forwarded to the primary responsible office(s) for action. The request has been assigned tracking #'22 02358 F', please log into your account and review your submission.

The application address is <http://foia.prc.pa.ed.gov/>

Please refer to the tracking number to check the status of your FOIA request at the link provided below:

<https://foiaexpress.pa.ed.gov/app/CheckStatus.aspx>

For any future correspondence, status updates or questions regarding your request, please contact the FOIA Public Liaison via email to EDFOIManager@ed.gov

Thank you,

Department of Education

EDFOIManager@ed.gov <EDFOIManager@ed.gov>
To: paul.moore@dfipolicy.org

Tue, Mar 29, 2022 at 3:34 PM

Dear Paul Moore,

Your request has been received by the Department of Education and forwarded to the primary responsible office(s) for action. The request has been assigned tracking #'22 02360 F', please log into your account and review your submission.

The application address is <http://foia.prc.pa.ed.gov/>

[Quoted text hidden]

EDFOIManager@ed.gov <EDFOIManager@ed.gov>
To: paul.moore@dfipolicy.org

Tue, Mar 29, 2022 at 3:45 PM

Dear Paul Moore,

Your request has been received by the Department of Education and forwarded to the primary responsible office(s) for action. The request has been assigned tracking #'22-02361-F', please log into your account and review your submission.

The application address is <https://foiexpress.pal.ed.gov/>.

[Quoted text hidden]

Exhibit B-3

Department's April 26, 2022
20-Day Status Notification



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

FOIA Service Center

April 26, 2022

Mr. Paul R Moore
 Senior Counsel
 Defense of Freedom Institute for Policy Studies
 1455 Pennsylvania Ave NW
 Suite 400
 Washington, DC 20004

RE: 20 –DAY NOTIFICATION 22-02358-F

Dear Paul R Moore:

This is the Department of Education’s (the Department) initial determination letter to your request dated, March 28, 2022, seeking information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was forwarded to the appropriate office(s) within the Department for any responsive documents they may have.

Due to the unusual circumstances that exist with your FOIA requests as defined by U.S.C. § 552(a)(6)(B)(i)(ii), the Department will not be able to respond by the 20 day statutory requirement. The scope of your FOIA requests requires the Department to conduct a vast search, which we anticipate will result in a large amount of responsive records.

You can check on the status of your FOIA request at the link provided below:

<https://foiexpress.pal.ed.gov/app/CheckStatus.aspx>

You have the right to seek assistance and/or dispute resolution services from the Department’s FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA Public Liaison is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

They can be contacted by:

Mail	FOIA Public Liaison Office of the Executive Secretariat U.S. Department of Education 400 Maryland Ave., SW, LBJ 7C132 Washington, DC 20202-4500	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road College Park, MD 20740-6001
E-mail	robert.wehausen@ed.gov	OGIS@nara.gov
Phone	202-205-0733	202-741-5770; toll free at 1-877-684-6448
Fax	202-401-0920	202-741-5769

Sincerely

ED FOIA Manager
 FOIA Service Center
 U.S. Department of Education

Exhibit B-4
Department's October 17,
2022 Interim Records
Provisions



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

FOIA Service Center

October 17, 2022

Mr. Paul R. Moore
Senior Counsel
Defense of Freedom Institute for Policy Studies
1455 Pennsylvania Ave NW
Suite 400
Washington, DC 20004

RE: FOIA Request No. 22-02358-F

Dear Paul R. Moore:

This letter is an interim response to your request for information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, dated March 28, 2022, and received in this office on March 29, 2022. Your request was forwarded to the Office of Elementary & Secondary Education (OESE) to search for documents that may be responsive to your request.

You requested:

1. All non-deliberative communications of ED officials (see “Custodians” *infra*) within the Office of Elementary and Secondary Education (“OESE”), particularly communications sent by, copied to, or received by ED OESE officials from January 1, 2015, through the date the search is conducted, which reference any of the following:
 - a. Equity Assistance Center, Equity Assistance Centers, EAC, or EACs
 - b. Desegregation Assistance Centers, Desegregation Centers, DAC, or DACs
 - c. 4.004D
 - d. Civil Rights Training and Advisory Service or Civil Rights Training and Advisory Services
 - e. 34 CFR 270
 - f. 42 USC 2000c
 - g. WestEd
 - h. Brown University – The Education Alliance Equity and Diversity Projects
 - i. Mid-Atlantic Equity Consortium
 - j. Intercultural Development Research Association
 - k. Kansas State University – College of Education, Dean of Education
 - l. Education Northwest
 - m. Southeastern Equity Alliance, Inc.
 - n. Touro College – School of Education, Lander Center for Education Research
 - o. Metropolitan State College of Denver
 - p. Indiana University – Great Lakes Equity Center

Page 2 of 4 - Paul R Moore
FOIA Request No. 22-02358-F

2. Each application received by ED for a program award grant (Program No. 84.004D), whether or not awarded, to fund “Equity Assistance Center(s)” or “Desegregation Assistance Center(s)” or “Training and Advisory Services,” authorized under title IV of the Civil Rights Act of 1964, 42. U.S.C. 2000c-2000c2, 2000c5, and 34 CFR part 270 for fiscal years 2016 (Federal Register Document Number 2016-16809, published July 18, 2016), 2017, 2018, 2019, 2020, 2021, through the present (Federal Register Document Number 2022-03208, published February 15, 2022) from July 18, 2016, through the date the search is conducted.
3. All records of ED officials (see “Custodians” *infra*) related to the receipt, evaluation, processing, and award or declination of award for each grant application identified in Item 2. “Records” should include but not be limited to electronic mail (“email”), texts, letters, memoranda, annual performance reports, and other documentation regarding applications received by ED from July 18, 2016, through the date the search is conducted.
4. Each cooperative agreement executed between ED/OESE and award grant recipient (i.e., each entity to which an EAC grant was awarded) pursuant to the program described in Item 2, from July 18, 2016, through the date the search is conducted, including but not limited to the cooperative agreements (and any modifications or revisions to those agreements) with each of the following:
 - a. WestEd
 - b. Brown University – The Education Alliance Equity and Diversity Projects
 - c. Mid-Atlantic Equity Consortium
 - d. Intercultural Development Research Association
 - e. Kansas State University – College of Education, Dean of Education
 - f. Education Northwest
 - g. Southeastern Equity Alliance, Inc.
 - h. Touro College – School of Education, Lander Center for Education Research
 - i. Metropolitan State College of Denver
 - j. Indiana University – Great Lakes Equity Center
5. All records of ED officials (see “Custodians” *infra*), including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation, which provided the evidentiary basis (and sources of such evidentiary basis) upon which ED relied in its Funding Opportunity Description, published in the Federal Register on February 15, 2022 (Document Number 2022-03208), indicating that “instances of online bullying related to race or ethnicity as a result of an increase in virtual instruction during the pandemic” had occurred, from January 20, 2021, through the date the search is conducted.
6. All non-deliberative communications of ED officials (see “Custodians” *infra*) within OESE from November 3, 2020, through the date the search is conducted, which reference:

Page 3 of 4 - Paul R Moore
FOIA Request No. 22-02358-F

- a. Withdrawal of Notice Inviting Applications and Cancellation of the Competition for the Equity Assistance Centers Program
 - b. 86 CFR 2653
 - c. Assistance Listing number 84.004D
 - d. 84.004D
7. A list of the 36 State educational agencies (“SEAs”), 196 local educational agencies (“LEAs”), and 277 schools in 49 states and territories receiving targeted and intensive assistance from Equity Assistance Centers in fiscal year 2020, as stated on page C-48 of the document entitled “School Improvement Programs” accessible on ED’s website. www.DFIpolicy.org
8. All documents identifying the Midwestern state and the EAC that “helped to change the way nearly 330,000 elementary, middle, and high school students learn social studies,” as stated on page C-49 of the document entitled “School Improvements Programs” accessible on ED’s website.

On July 19, 2022, the Defense of Freedom Institute for Policy Studies accepted our plan to begin production of the requested records.

Available for Public Access Link (PAL) download are 60 pages of documents responsive to item 4 of your request. The documents provided are:

- FY22 EAC Cooperative Agreements.

You can access your PAL account or register for a PAL account at this link:

<https://foiaexpress.pal.ed.gov/app/PalLogin.aspx>

However, certain information has been withheld according to FOIA exemption (b)(6), specified below:

- Records or portions of records relating to personal information is exempt pursuant to 5 U.S.C. §552 (b)(6) of the FOIA. Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy.

At this time, the Department is continuing to process your request. You will receive any additional documents under a separate cover letter.

You have the right to seek assistance and/or dispute resolution services from the Department’s FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA Public Liaison is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to appeals or litigation. They can be contacted by:

Page 4 of 4 - Paul R Moore
FOIA Request No. 22-02358-F

Mail	FOIA Public Liaison Office of the Secretary U.S. Department of Education 400 Maryland Ave., SW, LBJ 7W104 Washington, DC 20202-4500	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road Room 2510 College Park, MD 20740-6001
E-mail	robert.wehausen@ed.gov	OGIS@nara.gov
Phone	202-205-0733	301-837-1996; toll free at 1-877-684-6448
Fax	202-401-0920	301-837-0348

You have the right to appeal this decision by writing to the address below, 90 calendar days from the date of this letter. Using the services described above does not affect your right or the deadline to file an appeal. Your appeal must be in writing and must include detailed statement of all legal and factual bases for the appeal; it should be accompanied by this letter, a copy of your initial letter of request, and any documentation that serves as evidence or supports the argument you wish the Department to consider in making an administrative determination on your appeal.

Appeals may be submitted using the on-line form available at
www.ed.gov/policy/gen/leg/foia/foia-appeal-form.pdf.

E-mail: EDFOIAappeals@ed.gov
Fax: 202-401-0920
Mail: Appeals Office
Office of the Secretary
U.S. Department of Education
400 Maryland Avenue, SW, LBJ 7W104
Washington, DC 20202-4500

Sincerely,

DeShawn Middleton
DeShawn Middleton
Government Information Specialist
Office of the Secretary