

September 21, 2022

Kun Mullan, PRA Coordinator  
Strategic Collections and Clearance Governance and Strategy Division,  
Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development  
Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202-4537

Re: DC School Choice Incentive Program Information Collection: Docket No. ED-2022-SCC-0074

Dear Coordinator Mullan:

On behalf of the National Coalition for Public Education (NCPE), we submit these comments in response to the Notice for the comment on the “DC School Choice Incentive Program” that was published in the Federal Register on August 22, 2022. We oppose all private school voucher programs, including the DC voucher program, as authorized through the Scholarships for Opportunity and Results Act (SOAR Act) and most recently renewed through the appropriations process in 2020.<sup>1</sup> We strongly believe that the United States Department of Education (USED) must build upon its prior studies<sup>2</sup> and evaluate the voucher program in a rigorous and thorough manner. These vouchers are funded by taxpayer dollars and, thus, the program should be subject to the same reporting, transparency, and accountability requirements placed on public schools. We write, therefore, to show our support for collecting the data necessary for an effective evaluation of the program.

The Department should follow a rigorous process for collecting data and evaluating this program similar to what was done prior to 2018. Where the strongest possible research design is not possible, USED should clarify that the weakening of evaluation standards from the “strongest possible research design” to a “quasi-research design”<sup>3</sup> has a negative impact on the value of the findings compared to previous years.

We appreciate that USED is seeking to collect new information about family demographics, parental participation and satisfaction, and disabilities to continue to evaluate the program. The USED evaluations to date have been essential in highlighting the program’s shortcomings. Without the series of USED studies, parents and taxpayers would have had no way to know that the program has not led to any significant improvement in students’ academic achievement,<sup>4</sup> and in fact led to a negative impact

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<sup>1</sup> Pub. L. No. 116-94 § 901.

<sup>2</sup> U.S. Dep’t of Educ., [Evaluation of the DC Opportunity Scholarship Program: Impacts Three Years After Students Applied](#) (May 2019) (2019 U.S. Dep’t of Educ. Report); U.S. Dep’t of Educ., [Evaluation of the D.C. Opportunity Scholarship Program: Impacts Two Years After Students Applied](#) (June 2018) (2018 U.S. Dep’t of Educ. Report); U.S. Dep’t of Educ., [Evaluation of the D.C. Opportunity Scholarship Program: Impacts After One Year](#) (June 2017) (2017 U.S. Dep’t of Educ. Report); U.S. Dep’t of Educ., [Evaluation of the D.C. Scholarship Program: Final Report](#) (June 2010) (2010 U.S. Dep’t of Educ. Report); U.S. Dep’t of Educ., [Evaluation of the D.C. Scholarship Program: Impact After 3 Years](#) (Apr. 2009) (2009 U.S. Dep’t of Educ. Report); U.S. Dep’t of Educ., [Evaluation of the D.C. Scholarship Program: Impact After 2 Years](#) (June 2008) (2008 U.S. Dep’t of Educ. Report); U.S. Dep’t of Educ., [Evaluation of the D.C. Scholarship Program: Impact After 1 Year](#) (June 2007) (2007 U.S. Dep’t of Educ. Report).

<sup>3</sup> The 2017 reauthorization of the SOAR Act amended Sec. 2009(a)(2)(A)(i) to weaken the rigor of the required evaluation standards from “the strongest possible research design” to “an acceptable quasi-research design.” D.C. Code § 38-1843.09(a)(2)(A)(i).

<sup>4</sup> 2019 U.S. Dep’t of Educ. Report; 2018 U.S. Dep’t of Educ. Report; 2017 U.S. Dep’t of Educ. Report.

on math achievement in two recent years.<sup>5</sup> Nor would they know the extent to which the program has failed students with disabilities.<sup>6</sup> And, without the USED studies, we would not know that students participating in the program are actually *less* likely to have access to programs for English language learners, learning supports for students with disabilities, safety measures,<sup>7</sup> a nurse's office, a cafeteria, and counselors<sup>8</sup> than students not participating in the program. Accordingly, the government must continue to collect all information necessary to evaluate these aspects of the program.

In these comments, we explain why this information collection remains essential, and identify more data that we believe USED must collect to properly evaluate the program.

### **Due to Continued Problems, the Department Should Collect Information About Participating Private Schools.**

In the past, the DC voucher program has failed to meet even the most basic standards for quality control, transparency, and accountability. The previous program administrator even admitted that “quality oversight of the program [wa]s sort of a dead zone, a blind spot.”<sup>9</sup> And the program administrator was unable to provide basic program information to a Congressional oversight committee, such as what percentage of each voucher school's population comprised students using a voucher.<sup>10</sup>

The federal government should entrust neither its funds nor the District of Columbia's students to any private school unless the school meets basic requirements for safety and effectiveness. Yet, an investigation by *The Washington Post* concluded that the program lacks quality controls for participating schools. It reported:

that hundreds of students use their voucher dollars to attend schools that are unaccredited or are in unconventional settings, such as a family-run K-12 school operating out of a storefront, a Nation of Islam school based in a converted Deanwood residence, and a school built around the philosophy of a Bulgarian psychotherapist.<sup>11</sup>

Previous GAO reports on the DC voucher program discovered troubling facts about its operation. First, the GAO found that the program administrator had failed to ensure that the participating schools adhered to the rules of the program specified in the SOAR Act or even District of Columbia laws. The administrator permitted schools to participate—and allowed students to attend schools—even though they lacked a valid DC occupancy certificate, neglected to submit required financial data, and failed to submit required annual operational reports with basic information on curriculum, teachers' education, and school facilities.<sup>12</sup> Indeed, some participating schools failed to submit information on accreditation

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<sup>5</sup> 2018 U.S. Dep't of Educ. Report at 19; 2017 U.S. Dep't of Educ. Report at 11.

<sup>6</sup> See e.g., 2010 U.S. Dep't of Educ. Report at 24-26.

<sup>7</sup> 2018 U.S. Dep't of Educ. Report at 18.

<sup>8</sup> 2010 U.S. Dep't of Educ. Report at 20; 2009 U.S. Dep't of Educ. Report at 17.

<sup>9</sup> Lyndsey Layton, [D.C. School Voucher Program Lacks Oversight, GAO Says](#), *The Wash. Post* (Nov. 15, 2013).

<sup>10</sup> Reauthorizing the D.C. Opportunity Scholarship Program: Hearing before the S. Comm. on Homeland Security and Government Affairs, 114th Congress (2015) (testimony of Kevin Chavous, Serving Our Children).

<sup>11</sup> Lyndsey Layton, [Quality Controls Lacking for D.C. Schools Accepting Federal Vouchers](#), *The Wash. Post*, (Nov. 17, 2012).

<sup>12</sup> U.S. Gov't Accountability Office, [District of Columbia Opportunity Scholarship Program: Actions Needed to Address Weaknesses in Administration & Oversight](#), Publication No. GAO-13-805 (Nov. 2013); U.S. Gov't Accountability Office, [District of Columbia Opportunity Scholarship Program: Additional Policies & Procedures Would Improve Internal Controls & Program Operations](#), Pub. No. 08-9 at 34-35 (Nov. 2007).

or educational soundness, yet voucher students were directed to and then attended those schools.<sup>13</sup> The program administrator also paid tuition for students to some schools that actually did not charge tuition and made disbursements to other schools without requiring them to submit the proper paperwork.<sup>14</sup> And, in 2013, the GAO found that nine of the ten schools they investigated did not meet the certificates of occupancy requirement.<sup>15</sup>

These repeated shortcomings make clear that USED should take steps to provide better oversight of the program. They further bolster the need for the USED to collect data not just about family demographics, parental participation and satisfaction, but also about schools and students in the program. It is especially vital that USED collect information to illuminate how schools are serving students with disabilities and whether schools are meeting the nondiscrimination requirements of the SOAR Act.<sup>16</sup> Only with additional information about participating schools and students can USED evaluate whether the program is fulfilling the requirements of the SOAR Act and serving students as intended.

Accordingly, we urge USED to collect the following information about participating schools:

Building & Safety:<sup>17</sup>

- Whether each school has and maintains a valid certificate of occupancy issued by the District of Columbia;<sup>18</sup>
- Whether each school will allow site visits by the program administrator;<sup>19</sup>
- How many years each school has been in operation;<sup>20</sup>
- Whether each school conducts criminal background checks on school employees;<sup>21</sup>

Educational Quality:<sup>22</sup>

- Whether each school has, are in the process of obtaining, or lack school accreditation;<sup>23</sup>
- The percentage of enrolled students participating in the voucher program at each school;<sup>24</sup>
- Whether each teacher of core subjects have a baccalaureate degree or the equivalent in the subject they teach;<sup>25</sup>
- Whether each school complies with standardized testing requirements;<sup>26</sup>
- Whether each school complies with reporting requirements regarding academic achievement, graduation and college admissions rates, parental satisfaction, and student discipline;<sup>27</sup>

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<sup>13</sup> 2007 GAO Report at 34.

<sup>14</sup> *Id.* at 22-23, 33.

<sup>15</sup> 2013 GAO Report at 21.

<sup>16</sup> SOAR Act, Pub. L. No. 112-10 at § 3008 (a).

<sup>17</sup> *Id.* at § 3007 (a)(4).

<sup>18</sup> *Id.* at § 3007 (a)(4)(A).

<sup>19</sup> *Id.* at § 3007 (a)(4)(D).

<sup>20</sup> *Id.* at § 3007 (a)(4)(C).

<sup>21</sup> *Id.* at § 3007(a)(4)(G).

<sup>22</sup> *Id.* at § 3007 (a)(4).

<sup>23</sup> *Id.* at § 3007 (a)(5).

<sup>24</sup> *Id.* at § 3005 (b)(1)(K).

<sup>25</sup> *Id.* at § 3007(a)(4)(F).

<sup>26</sup> *Id.* at § 3008(h).

<sup>27</sup> *Id.* at § 3010(c)(1).

### Financial Sustainability:

- Whether each school has adequate financial resources to be in operation through the school year;<sup>28</sup>
- Whether each school comports with financial reporting requirements;<sup>29</sup>
- Whether each school has the financial systems, controls, policies, and procedures to ensure that the voucher funds will be used in accordance with the statute.<sup>30</sup>

### **The Department Should Collect More Information About Experiences of Students with Disabilities.**

We are pleased to see that USED is using this information request to collect more data about students with disabilities. But there is more that USED should add to its information collection on this population to better evaluate the program.

Students with disabilities are often at risk of being excluded or discouraged from participating in voucher programs because of their past academic record, disciplinary history, and accessibility needs. Historically in the DC voucher program, students with disabilities often cannot locate a private school that can serve them: The 2010 USED report on the DC voucher program showed that a significant number of students had to reject their vouchers because they were unable to find a participating school that offered services for their learning or physical disability.<sup>31</sup> Indeed, it also found that 21.6% of the parents who rejected a voucher that was offered to their child did so because the school lacked the disability services that their child needed.<sup>32</sup> And, 12.3% of the parents, who accepted a voucher for their child but then left the program, cited a lack of services for students with disabilities.<sup>33</sup> More information about students with disabilities can help us understand how they continue to be underserved.

In order to improve opportunities for students with disabilities, it is vital that USED collect information not only about students with disabilities themselves but also about how well participating private schools are serving students' needs.

We urge USED to collect the following information about participating schools:

- Whether any school has refused to accept students with a specific disability or counseled them not to apply (if so, what types of disabilities);
- Whether any school makes information about what services for students with disabilities they provide available to prospective families;
- Whether any school employs teachers who are qualified to teach students with disabilities;
- The number of schools accepting vouchers that enroll students with disabilities.

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<sup>28</sup> *Id.* at § 3007 (a)(4)(C).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at § 3007 (a)(4)(E).

<sup>31</sup> 2010 US Dep't of Educ. Report at xxv, xxvi.

<sup>32</sup> *Id.* at xxv, 24-26.

<sup>33</sup> *Id.* at xxvi, 24-26.

In order to better understand the experience of students with disabilities in the program, we urge USED to collect the following specific information:

- The number of students with disabilities who applied for, were awarded, accepted, or rejected a voucher;
- The number of students with disabilities who accepted a voucher but then dropped out of the program;
- The number of students who drop out of the program, why they drop out, how long they used the voucher before dropping out, what school they attended when they dropped out, and what school they attended after leaving the voucher program.
- Whether parents of children with disabilities were notified of their child's loss of IDEA rights when they accepted a voucher;
- Whether children with disabilities in the voucher program are provided all or some of the services required by their most recent IEP or 504 plan.

### **The Department Should Collect More Information About Whether Participating Schools Are Discriminating Against Students.**

Despite receiving public funds, the private schools participating in the DC voucher program do not abide by all federal civil rights laws and accountability standards, including those in Title VI, Title IX, IDEA, Title II of the Americans with Disabilities Act and the Elementary and Secondary Education Act (ESEA), that all public schools must meet. Students who attend private schools with vouchers are stripped of their First Amendment, due process, and other constitutional and statutory rights provided to them in public schools. Although section 3008 of the SOAR Act provides some nondiscrimination protections<sup>34</sup> for students, it appears that the program's administrator, Serving Our Children, enforces these requirements solely through self attestations.

Many private schools participating in the DC voucher program maintain selective enrollment policies and place admission restrictions and requirements on students that are prohibited in publicly funded schools. Indeed, private schools participating in the DC voucher program can maintain their admission standards even for voucher students. Voucher schools across the country do reject students based on prior academic achievement, economic background, English language ability, LGBTQ status, or disciplinary history. Thus, even students who qualify for a voucher may never be able to use that voucher if the schools to which they apply do not accept them or provide the services they need.

In particular, religious schools may not be accessible to many students. The SOAR Act explicitly exempts religious schools from being required to follow its prohibitions on sex discrimination.<sup>35</sup> At the same time, students seeking non-religious options have a limited number from which to choose, since most private schools that participate in the DC voucher (62%)<sup>36</sup> are sectarian. Past studies revealed that 8% of the students who left their voucher school did so because religious activities at the private school made the student uncomfortable.<sup>37</sup> And 2% of students did not even accept a voucher because they did not want to attend a school that provided religious instruction.<sup>38</sup>

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<sup>34</sup> SOAR Act, Pub. L. No. 112-10 at § 3008.

<sup>35</sup> D.C. Code § 2-1402.41(b)(1).

<sup>36</sup> 2018 U.S. Dep't of Educ. Report at 13.

<sup>37</sup> 2008 US Dep't of Educ. Report at 23.

<sup>38</sup> *Id.*

In order to better assess student access to the private schools in the program, USED should collect information regarding:

- The nondiscrimination policies of each school to ensure that they meet the nondiscrimination provisions provided in Section 3008 of the SOAR Act and to determine if they operate outside of the nondiscrimination provisions of the DC Human Rights Act;<sup>39</sup>

Discrimination on the basis of religion:

- Whether each school bases admission or enrollment determinations on the religious beliefs or practices of the student or student's family;
- Whether each school requires students and families to sign a statement of faith;
- Whether each school requires students to abide by a religious code of conduct;
- Whether each school requires students to learn religious curriculum, attend religious classes, or participate in religious activities;

Discrimination on the basis of sex:

- Whether each school separates students on the basis of sex during instruction, and if so, how do they monitor compliance with Title IX;
- Whether each school seeks to utilize one of the statutory exemptions that allow religious schools to engage in gender discrimination for students<sup>40</sup> or religious hiring discrimination;<sup>41</sup>
- Whether each school has sexual harassment policies;
- Whether each school teaches anti-LGBTQ curriculum, has anti-LGBTQ admission policies, or anti-LGBTQ codes of conduct;

Discrimination on the basis of race:

- Whether each school reports different suspension and expulsion rates by race;<sup>42</sup>
- Whether school policies penalize students of color for natural hairstyles/braids.

**The Department Should Collect Additional Data Regarding Students Applying and Accepting Vouchers.**

The SOAR Act requires that the mandated evaluation examine parents' participation and satisfaction. We agree that this information should be collected. Information not specifically identified by statute, but that may aid in this analysis and should be collected, includes:

- The number of students who apply for the program;
- Why the interested student and his or her family seeks the voucher;
- Whether the interested student is offered a voucher; and
- Whether the interested student accepts or rejects the voucher and why.

Further, the statute grants USED the authority to collect data and evaluate "such other issues with respect to participating eligible students as the Secretary considers appropriate for inclusion in the evaluation."<sup>43</sup> We agree with the proposal in this information collection to collect more family

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<sup>39</sup> D.C. Code § 2-1402.41.

<sup>40</sup> Pub. L. No. 112-10 at § 3008(b).

<sup>41</sup> *Id.* at § 3008(d).

<sup>42</sup> *Id.* at § 3010 (c)(1)(B).

<sup>43</sup> *Id.* at § 3009 (a)(4)(F).

demographic information about participating students. In order to perform an effective and accurate analysis, we request that USED include the following information in your collection regarding students and their families:

- The number of students enrolled in the program and in what grades and schools they are enrolled;
- The number of students in the program who had previously attended schools “identified as one of the lowest-performing schools under the District of Columbia’s accountability system;”<sup>44</sup>
- The number of voucher students each private school accepting vouchers enrolls and the grades in which the voucher students are enrolled;
- Whether each student using a voucher graduates from high school, whether they were participating in the voucher program at the time of graduation, and how many years they used a voucher option before graduating;
- The number of students who use a voucher to attend a religious school and the percentage of participating private schools that are religious or religiously affiliated; and
- School attendance, dropout/attrition, graduation, and college acceptance rates for students using vouchers by grade, socio-economic status, disability status, English language learner status, ethnicity, gender, and by voucher school.

### **Better Data Collection Is Needed Regarding Graduation Rates.**

A 2010 USED study of the DC voucher program provided an analysis of graduation rates. But the study did not report graduation rates based on school records nor did the study track individual students as they advanced through the program. Instead, the report was based only on “telephone surveys with parents of students in the study forecasted to have completed the 12th grade by the summer of 2009.”<sup>45</sup> Only 316 of the 500 students forecasted to have completed the 12th grade answered the survey.<sup>46</sup> Such a process appears less than scientific and reliable. USED, therefore, should collect information to accurately determine graduation rates, including whether the students were using a voucher at the time of graduation and how many years the student participated in the program.

### **Conclusion**

In conclusion, we urge USED to collect the same data it has collected in previous years, the new data identified in this information collection, as well as the additional data identified above, in order to properly perform the statutorily required evaluation and increase the accountability and transparency of the program.

Sincerely,

AASA, The School Superintendents Association  
African American Ministers In Action  
American Atheists  
American Federation of State, County and Municipal Employees (AFSCME)  
American Federation of Teachers

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<sup>44</sup> D.C. Code § 38-1853.06(1)(A).

<sup>45</sup> 2010 U.S. Dep’t of Educ. Report at xx fn. 6.

<sup>46</sup> *Id.* at A-6.

American Humanist Association  
Americans United for Separation of Church and State  
Baptist Joint Committee for Religious Liberty (BJC)  
Center for Inquiry (CFI)  
Clearinghouse on Women's Issues  
Council for Exceptional Children  
Feminist Majority Foundation  
Freedom From Religion Foundation  
Interfaith Alliance  
National Association of Elementary School Principals  
National Association of Federally Impacted Schools  
National Association of Secondary School Principals  
National Center for Learning Disabilities  
National Council of Jewish Women  
National Disability Rights Network (NDRN)  
National Education Association  
National PTA  
National Rural Education Advocacy Collaborative  
National Rural Education Association  
People For the American Way  
Public Funds Public Schools  
Secular Coalition for America  
Union for Reform Judaism  
Women for Reform Judaism