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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

June 16, 2015

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Lynch:

I write to you regarding the Department of Justice's (DOJ) ongoing investigation into the Milwaukee Parental Choice Program (MPCP) and other Wisconsin school choice programs. In an April 9, 2013 letter, the DOJ notified the Wisconsin Department of Public Instruction (DPI) of allegations that the MPCP discriminates against students with disabilities and informed DPI that it would impose reporting requirements on the program.¹ According to the letter, "the United States will review these reports and take appropriate action, pursuant to the ADA and consistent with Department practice, if the information reported reveals actual or potential unlawful discrimination."²

In response, the DPI informed that DOJ that it "is not aware of any discriminatory policy or practice that it employs with respect to its administration of the Choice programs.... The DPI has no policy or practice of deterring students with disabilities from participating in the Choice programs."³ The DPI also expressed concerns that it does not have authority under state or federal law to take many of the actions demanded of it by the DOJ, including the DOJ's demand to require Choice schools to submit information to the DPI for DOJ review on the number of students with disabilities enrolled in, denied admission to, suspended or expelled from, and returned to a public school from a voucher school.⁴ The DPI requested that the DOJ "tell the DPI what aspects of the DPI's legislatively circumscribed administration of the Choice program results in any violation of Title II of the ADA."⁵ The DPI also expressed concern that the DOJ "is asking the DPI to help the United States implement or enforce the ADA against third parties (i.e., Choice schools)" in violation of U.S. Supreme Court decisions.⁶ Despite the absence of evidence and the objections raised by the DPI about the DOJ's requirements, the DPI issued a

¹ April 9, 2013 Letter from U.S. Department of Justice to the Wisconsin Department of Public Instruction, https://www.aclu.org/files/assets/04_09_13_letter_to_wisconsin_dpi_0.pdf.

² *Id.*

³ November 25, 2013 Letter from the Wisconsin Department of Public Instruction to the U.S. Department of Justice, <http://watchdog.wpengine.netdna-cdn.com/wp-content/blogs.dir/1/files/2014/04/DPI-Response-dated-November-25-2013.pdf>

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* (citing *Printz v. United States*, 521 U.S. 898, 925 (1997) and *New York v. United States*, 505 U.S. 144, 174-77 (1992)).

notice to Choice schools to provide the demanded information for DOJ review on the number of students with disabilities in voucher schools.⁷

As a long-time supporter of school choice in Wisconsin, I take any allegations of discrimination in the program very seriously. However, the DOJ's four-year investigation does not appear to have yielded any evidence of discrimination or any statistical or empirical trends of discrimination.⁸

I have concerns that this investigation is fueled by the Administration's opposition to school choice programs, not by any wrongdoing in the Wisconsin program. The MPCP is not the only school choice program subject to investigation by the DOJ.⁹ The DOJ invoked a 40 year-old desegregation case in an attempt to shut down the Louisiana Scholarship Program, arguing that issuing school vouchers in some school districts "frustrates and impedes the desegregation process."¹⁰ However, since 91 percent of the program's beneficiaries are minority students in failing schools, the DOJ lawsuit would have kept thousands of low-income minority children, the intended beneficiaries of desegregation decrees, from receiving a quality education.¹¹

The Administration's opposition to school choice programs is further evidenced by President Obama's decision to defund the D.C. Opportunity Scholarship Program in his most recent budget request.¹² As Chairman of the Senate committee with jurisdiction over the District of Columbia, I am a strong supporter of the D.C. Opportunity Scholarship Program, which has provided thousands of students the opportunity to access higher quality education who would have otherwise been stuck in some of the worst public schools in the country. Earlier this year, I co-authored a bipartisan letter to the President expressing disapproval of his proposed budget cuts to the D.C. program.¹³

I find it especially troubling that these actions by the Administration and the DOJ may only create further harm to those students and their families who seek to escape the cycle of poverty through improved educational opportunities afforded by school choice programs like those in Wisconsin, Louisiana, and in the District of Columbia.

⁷ June 10, 2014 Letter from Wisconsin Department of Public Instruction to Private School Choice Program Administrators, Designees, and Interested Parties, <http://media.jrn.com/documents/voucherschoolsletter.pdf>.

⁸ Kittle, M.D., "DOJ 'cloud' hangs over Wisconsin's school choice program," Wisconsin Reporter, January 28, 2015, <http://watchdog.org/195784/school-choice-doj-investigation/>.

⁹ Governor Bobby Jindal and Governor Scott Walker, "What's Obama's Problem with School Choice?," Politico, July 8, 2014, <http://www.politico.com/magazine/story/2014/07/whats-obamas-problem-with-school-choice-108667.html?hp=r2#.VUfZSflVhBe>. See also Will, George, "The DOJ's War on School Choice," National Review, November 19, 2014, <http://www.nationalreview.com/article/393020/dojs-war-school-choice-george-will>.

¹⁰ Bolick, Clint, "Justice Department vs. Louisiana Voucher Kids," Wall Street Journal, September 23, 2013, <http://www.wsj.com/articles/SB10001424127887323808204579089093469535268>.

¹¹ *Id.*

¹² Moore, Stephen, "President Obama, Are You Listening?," Wall Street Journal, May 1, 2015, <http://www.wsj.com/articles/president-obama-are-you-listening-1430522350>.

¹³ February 26, 2015 Letter from Senators Ron Johnson, Dianne Feinstein, James Lankford and Tim Scott to President Obama.

In order to assist the Committee's oversight of these issues, please provide the following information:

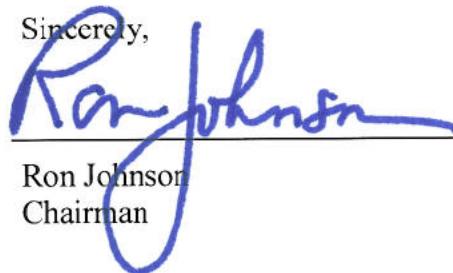
1. As requested by the DPI, please explain what aspects of the DPI's "administration of the Choice program result in any violation of Title II."
2. Please provide copies of any complaints submitted to the DPI and provided to the DOJ regarding disability-related discrimination in the Choice programs;
3. Please provide the DPI's response to complaints it received of disability-related discrimination provided to the DOJ;
4. Please provide any materials or training documents provided to the DPI by the DOJ Office of Civil Rights that are directed to be used to provide information and instruction to Choice schools; and
5. Please provide any reports, findings, or reviews produced by the DOJ in its investigation into the allegations of discrimination against students with disabilities in the administration of the MPCP or Choice programs in the state of Wisconsin.

Please provide this information and material as soon as possible, but no later than 5:00 p.m. on June 30, 2015.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."¹⁴ Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine "the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption or unethical practices...."¹⁵ For purposes of this request, please refer to the definitions and instructions in the enclosure.

If you have any questions about this request, please contact [REDACTED] of the Committee staff (Majority) at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,



Ron Johnson
Chairman

¹⁴ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

¹⁵ S. Res. 73 § 12, 114th Cong. (2015).

The Honorable Lynch
June 16, 2015
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cc: The Honorable Thomas R. Carper
Ranking Member

Enclosure

Instructions for Responding to a Committee Request
Committee on Homeland Security and Governmental Affairs
United States Senate
114th Congress

A. Responding to a Request for Documents

1. In complying with the Committee's request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e. CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image Files (".tif"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and .tif file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

Instructions for Responding to a Committee Request

- e. Alternatively, if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (““.pdf”) format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
 - f. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to the request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When producing documents, identify the paragraph in the Committee’s schedule to which the documents respond.
9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
10. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date, should be produced immediately upon subsequent location or discovery.
11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
13. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.

Instructions for Responding to a Committee Request

14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
16. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
18. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

B. Responding to Interrogatories or a Request for Information

1. In complying with the Committee's request, answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury (when under oath) or for making false statements. Persons that knowingly withhold subpoenaed information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests should be made in writing and should be signed by you, your counsel, or a duly authorized designee.

Instructions for Responding to a Committee Request

4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. Do not refuse to provide knowledge, information, or facts on the basis that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it was not known by the return date, should be provided immediately upon subsequent discovery.
8. Two sets of responses should be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date or other descriptive detail set forth in this request is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, provide the information that would be responsive as if the date or other descriptive detail was correct.
12. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
13. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.

Instructions for Responding to a Committee Request

C. Definitions

1. The term “document” in the request or the instructions means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
3. The terms “and” and “or” in the request or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” in the request or the instructions, when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address and phone number.

Instructions for Responding to a Committee Request

6. The terms “referring” or “relating” in the request or the instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de fact employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee or subcontractor.
8. The terms “you” and “your” in the request or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

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