

MAJORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,  
*Chairman*

SUSAN A. DAVIS, CALIFORNIA  
RAÚL M. GRIJALVA, ARIZONA  
JOE COURTNEY, CONNECTICUT  
MARCIA L. FUDGE, OHIO  
GREGORIO KILILI CAMACHO SABLÁN,  
NORTHERN MARIANA ISLANDS  
FREDERICA S. WILSON, FLORIDA  
SUZANNE BONAMICI, OREGON  
MARK TAKANO, CALIFORNIA  
ALMA S. ADAMS, NORTH CAROLINA  
MARK DESAULNIER, CALIFORNIA  
DONALD NORCROSS, NEW JERSEY  
PRAMILA JAYAPAL, WASHINGTON  
JOSEPH D. MORELLE, NEW YORK  
SUSAN WILD, PENNSYLVANIA  
JOSH HARDER, CALIFORNIA  
LUCY MCBATH, GEORGIA  
KIM SCHRIER, WASHINGTON  
LAUREN UNDERWOOD, ILLINOIS  
JAHANA HAYES, CONNECTICUT  
DONNA E. SHALALA, FLORIDA  
ANDY LEVIN, MICHIGAN  
ILHAN OMAR, MINNESOTA  
DAVID J. TRONE, MARYLAND  
HALEY M. STEVENS, MICHIGAN  
SUSIE LEE, NEVADA  
LORI TRAHAN, MASSACHUSETTS  
JOAQUIN CASTRO, TEXAS



COMMITTEE ON  
EDUCATION AND LABOR  
U.S. HOUSE OF REPRESENTATIVES  
2176 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA,  
*Ranking Member*  
DAVID P. ROE, TENNESSEE  
GLENN THOMPSON, PENNSYLVANIA  
TIM WALBERG, MICHIGAN  
BRETT GUTHRIE, KENTUCKY  
BRADLEY BYRNE, ALABAMA  
GLENN GROTHMAN, WISCONSIN  
ELISE M. STEFANIK, NEW YORK  
RICK W. ALLEN, GEORGIA  
LLOYD SMUCKER, PENNSYLVANIA  
JIM BANKS, INDIANA  
MARK WALKER, NORTH CAROLINA  
JAMES COMER, KENTUCKY  
BEN CLINE, VIRGINIA  
RUSS FULCHER, IDAHO  
RON WRIGHT, TEXAS  
DANIEL MEUSER, PENNSYLVANIA  
DUSTY JOHNSON, SOUTH DAKOTA  
FRED KELLER, PENNSYLVANIA  
GREGORY F. MURPHY, NORTH CAROLINA  
JEFFERSON VAN DREW, NEW JERSEY

October 22, 2020

The Honorable Betsy DeVos  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Secretary DeVos:

On July 16, 2019, the U.S. House Committee on Education and Labor (Committee) opened an investigation into the U.S. Department of Education's (Department's) handling of Dream Center Education Holdings' (Dream Center's) misrepresentations to students and its untimely collapse. During the following 15 months, the Committee has tried to obtain answers from the Department. This took the form of requests for documents and transcribed interviews from relevant Department personnel to better understand these events. In response, the Department has obstructed the Committee at every turn.

The Department has regularly ignored the Committee's emails and requests to negotiate. The Department has repeatedly agreed to prioritize certain requested documents only to later abandon those commitments and instead produce unrelated documents as part of "data dumps."<sup>1</sup> When the Department ultimately complied with agreements for production, it provided almost entirely redacted document sets without indicating why essential content was withheld.<sup>2</sup>

In short, the Committee's attempts to accommodate the Department in good faith have not been reciprocated. On five separate occasions the Department requested accommodations from the Committee. Each time, however, the Department moved the goalposts, adding new hurdles after each concession by the Committee, producing non-compliant or nominally compliant document

<sup>1</sup> Lauren Camera, *House Democrats Threaten to Subpoena Betsy DeVos*, U.S. News, Oct. 22, 2019.

<sup>2</sup> See Acting General Counsel Reed D. Rubinstein, responding on behalf of Secretary Betsy DeVos, Letter to Chairman Robert C. "Bobby" Scott (Dec. 20, 2020) ("Redacted Production"); see also Chairman Robert C. "Bobby" Scott, Letter to Secretary Betsy DeVos (Jan. 31, 2020).

productions that did not advance the Committee's investigation,<sup>3</sup> and even renegeing on its commitments entirely.<sup>4</sup>

First, on July 22, 2019, the Department agreed to respond to the Committee's July 16, 2019 request, but asked the Committee to accommodate a "staged production" whereby the Department would produce responsive records, then participate in transcribed interviews, as necessary.<sup>5</sup> The Committee agreed to the accommodation within three days, yet the Department failed to produce the requested documents.

Second, on August 2, 2019, the Department requested the Committee divide its document request into smaller pieces, which the Department would produce sequentially. The Committee acquiesced, providing a sub-divided and prioritized list later that same day. And still, the Department failed to produce the requested documents.

Third, on August 8, 2019, the Department requested the Committee narrow its already-narrowed request to again accommodate the Department, with the understanding that the Department would then make productions sequentially. That same day, the Committee agreed to accommodate the Department, requesting the Department first produce relevant communications to and from Principal Deputy Under Secretary Diane Auer Jones. The Department ignored this prioritization, instead providing fewer than 1,500 pages of records over the next few months. These productions included only a single email chain from Under Secretary Jones spanning less than three pages. Other aspects of the Committee's Dream Center investigation indicate the existence of numerous other documents responsive to the Committee's request.

Fourth, on November 22, 2019, the Department asked the Committee to further narrow its request. The Committee again accommodated the Department, providing an even more narrowly tailored and prioritized schedule within three days. It then took the Department approximately a month to comply with the Committee's twice-narrowed request.<sup>6</sup> Unfortunately, the Department redacted the content of the production so heavily that it was impossible to derive meaningful information from it or to verify the Department's claims that the production was fully responsive. In fact, the redactions rendered the production devoid of meaningful content.<sup>7</sup> The Department partially or completely redacted the contents of 96% of the pages, without any explanation about the basis for these redactions.<sup>8</sup>

Finally, after the Committee raised legitimate concerns about the Department's redactions, the Department, on January 10, 2020, requested to abandon the previously agreed upon production schedule and instead require the Committee to review all requested documents *in camera* at the

---

<sup>3</sup> See generally Redacted Production.

<sup>4</sup> See Acting General Counsel Reed D. Rubinstein, responding on behalf of Secretary Betsy DeVos, Letter to Chairman Robert C. "Bobby" Scott (Sept. 20, 2019); see also Acting General Counsel Reed D. Rubinstein, responding on behalf of Secretary Betsy DeVos, Letter to Chairman Robert C. "Bobby" Scott (Oct. 23, 2019).

<sup>5</sup> Acting General Counsel Reed D. Rubinstein, responding on behalf of Secretary Betsy DeVos, Letter to Chairman Robert C. "Bobby" Scott at 1 (July. 22, 2019).

<sup>6</sup> See Redacted Production.

<sup>7</sup> See *id.*

<sup>8</sup> See Chairman Robert C. "Bobby" Scott, Letter to Secretary Betsy DeVos (Jan. 31, 2020).

Department's headquarters. During the ensuing negotiations, it became clear that the Department's offer of *in camera* review was conditioned on Committee's agreement that the Department have the right to review and retain any notes taken by Committee personnel.<sup>9</sup> In other words, the Department's demand placed the Committee in the untenable position of exposing its investigative work product to the target of the investigation. The Committee rejected this patently unreasonable term in March 2020 and repeatedly thereafter.

This proposed condition goes far beyond what is traditional for *in camera* review. Numerous examples exist of House Committees and Executive Branch agencies, led by different political parties, establishing procedures for *in camera* review that did not include such onerous requirements.<sup>10</sup> Such a condition was not even imposed on a Committee *in camera* review of national security material deemed "extraordinarily sensitive," the disclosure of which "could adversely effect [sic] the ability for the United States to gather intelligence information or significantly compromise national security."<sup>11</sup>

Although this was the first and only time the Committee rejected an accommodation requested by the Department during the 15 months of negotiations, the Department wasted no time mischaracterizing the Committee's position as the cause for delay. In reality, the Department never substantively engaged with the Committee's concerns or offered a second option, instead simply repeating this condition or ignoring the Committee outright despite more than a dozen attempts to negotiate alternatives. The Department essentially offered a take-it or leave-it deal that it knew the Committee would not and could not accept. After more than a year of one-sided concessions by the Committee, it is farcical for the Department to blame the Committee for this impasse.

Moreover, the Department has not explained its apparent privilege assertions with any specificity, leaving the Committee unable to determine if legitimate privileges exist or not. While the Department has generally asserted the existence of the deliberative process privilege when referencing these documents,<sup>12</sup> the D.C. Circuit has held that "the [deliberative process] privilege disappears altogether when there is any reason to believe government misconduct

---

<sup>9</sup> See, e.g., E-mail from Staff, Department of Education, to Staff, Committee on Education and Labor (Feb. 26, 2020, 5:17 PM EDT) (on file with author); see also E-mail from Staff, Department of Education, to Staff, Committee on Education and Labor (Mar. 6, 2020, 4:03 PM EDT) (on file with author). The Committee will note that after repeatedly raising this condition as the Committee's principle objection, in an October 21, 2020 letter to Committee staff, Department staff indicated that Committee staff had "objected to terms of a review to which it had agreed in March of 2020, including an explicit commitment not to take verbatim notes." Committee staff did agree to accommodate the Department's request to not take verbatim notes, and at no point objected to this afterward. It appears that the Department has conflated an agreement to not take verbatim notes with an agreement to allow the Department to review and retain Committee staff's notes. Though it appears self-evident, the Committee will clarify that these are distinct terms. See Senior Advisor to the Secretary, Daniela R. Garcia, Letter to Committee staff (Oct. 21, 2020).

<sup>10</sup> See, e.g., H. Rep. No. 106-1027, at 767-68 (2000)

<sup>11</sup> See *id.*

<sup>12</sup> See Acting General Counsel Reed D. Rubinstein, responding on behalf of Secretary Betsy DeVos, Letter to Chairman Robert C. "Bobby" Scott at 1 (Jan. 10, 2020).

The Honorable Betsy DeVos

October 22, 2020

Page 4

occurred.”<sup>13</sup> The Committee has demonstrated the Department’s misconduct in this matter, producing specific examples where testimony and answers for the record contradict facts memorialized in emails, text messages, and letters.<sup>14</sup> Critical questions remain regarding the significance and extent of this misconduct.

Due to the Department’s obstruction, the Committee’s only available avenue to obtain an accurate understanding of the Department’s role in the Dream Center collapse is to pursue depositions of the knowledgeable Department officials under subpoena. Accordingly, the Committee has served such subpoenas on the relevant Department staff. This letter provides the Department notice of that action as a courtesy. The Committee additionally requests that the Department confirm preservation of all responsive or potentially responsive documents to the Committee’s July 16, 2019 and October 22, 2019 requests. The Committee will continue its oversight of this matter with the goal of getting answers about Dream Center’s collapse.

Please send all official correspondence and information relating to this request to the Committee's Clerk, Mariah Mowbray, at [Mariah.Mowbray@mail.house.gov](mailto:Mariah.Mowbray@mail.house.gov). Thank you for your attention to this matter, and I look forward to your response.

Sincerely,



---

**ROBERT C. “BOBBY” SCOTT**  
Chairman

Cc: The Honorable Virginia Foxx, Ranking Member

---

---

<sup>13</sup> *In re Sealed Case*, 121 F.3d 729, 746 (emphasis added) (The D.C. Circuit later indicates that “when government misconduct is alleged” deliberative process privilege disappears.) Additionally, as I wrote in a January 31, 2020 letter to Secretary DeVos, Deliberative Process Privilege is never a legitimate reason to withhold documents from Congress because “while the Committee recognizes the Constitutional grounds of the presidential communication privilege... the Committee does not recognize the constitutional grounds of the deliberative process privilege.” Chairman Robert C. “Bobby” Scott, Letter to Secretary Betsy DeVos (Jan. 31, 2020).

<sup>14</sup> *See generally* H. Comm. On Education and Labor, 116<sup>th</sup> Cong., *Shattered Dreams: Examining the Education Department’s Role in the Misconduct of Dream Center Education Holdings* (July 2020).