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## United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

<http://appropriations.senate.gov>

February 25, 2019

The Honorable Betsy DeVos  
Secretary of Education  
United States Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202

Dear Secretary DeVos:

We are writing to express our extreme disappointment with how the Department is choosing to implement the Department of Education Appropriations Act, 2019. We believe that the Department is missing a great opportunity to work with Congress on an investment that was intended to help advance open textbooks and reduce the cost of higher education for students.

It's been more than twenty years since the Department has received its appropriation before the start of the fiscal year. The timing of fiscal year 2019 appropriations provided an opportunity to more closely align the implementation of its appropriation with the expectations of Congress. It also means there was more than sufficient time for the Department to follow all the customary rules that apply to the administration of its programs.

Unfortunately, the Department chose to ignore Congress' clear intent and, once again, forego public input on plans to use funds appropriated for the Open Textbook Pilot program. Last year, the Department initially committed to soliciting feedback on its plans, but then abruptly changed course and only provided a limited opportunity for consultation with groups of its choosing.<sup>1</sup> Apparently, despite what we have frequently heard from you about your belief in the limited federal role in education, in this case you believe your staff should, without consultation or transparency, determine the rules and impact for a program that has never been a part of any of your budget requests.

Regrettably, by ignoring the normal public comment period, the Department has not fully heard the views of stakeholders and open educational resources experts on the Department's plans. The Department has implied it did not have time for such a process.<sup>2</sup> However, last year's appropriations bill was enacted almost half way through the fiscal year and the Department still was able to develop a Notice Inviting Applications and administer a grant competition. This year, the Department had even more time for proper implementation of the program consistent with Congressional directives.

In recent conversations with our staff, the Department indicated that it would not conduct

<sup>1</sup> August 2, 2018 letter to the Honorable Betsy DeVos from Senator Richard J. Durbin, et al.

<sup>2</sup> January 15, 2019 letter to the Honorable Richard J. Durbin, et al from Principal Deputy Under Secretary, Diane Auer Jones.

a new competition for the additional \$5 million appropriated for the Open Textbook Pilot program for fiscal year 2019, and would instead fund two additional projects from the fiscal year 2018 application slate. Regardless of the quality of the two additional projects, this is in flagrant violation of the Congressional directive for the Department to conduct a “new competition and make not less than 20 new grants” with the fiscal year 2019 funds.<sup>3</sup> The Department has intentionally ignored Congress without any rationale or the benefit of broad public input.

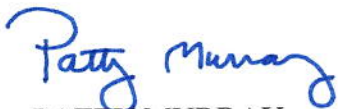
Further, if the Department was truly interested in soliciting the comments of experts in the field in a transparent manner, it would not have taken three months to respond to a simple letter reminding it of our interest.<sup>4</sup> It could have used that time to draft materials and enter them for public comment in the Federal Register.

Now that the Department has chosen to ignore our intent and fund down the slate of fiscal year 2018 applications, we request the Department provide:

1. By March 7 the full slate of unfunded applications from the Open Textbook Pilot program competition conducted in fiscal year 2018.
2. By April 18 all communications both within the Department and externally related to the Open Textbook Pilot program. Such communications should include, but not be limited to, emails, letters, faxes, and any other written materials, as well as a list of any meetings, calls, or other oral communication that took place. In the case of meetings, calls, or other oral communications, please include the date, time, and location at which such communications took place, a list of the participants and any affiliated employers or organizations, as well as a description of the communication.
3. A full analysis of why the Department believes that not holding a new competition for the Open Textbook Pilot, in violation of Congressional directive, is in the interest of students, institutions, and taxpayers.

We appreciate you taking this matter seriously and providing full and prompt responses.

Sincerely,



PATTY MURRAY  
Ranking Member, Subcommittee on  
Labor, Health and Human Services,  
and Education, and Related Agencies



RICHARD J. DURBIN  
United States Senator

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<sup>3</sup> Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019. H. Rept. 115-952. <https://www.congress.gov/congressional-report/115th-congress/house-report/952/1>

<sup>4</sup> *Supra*, see note 2.