

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074
<https://oversight.house.gov>

August 13, 2020

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

Dear Secretary DeVos:

Officials in Montgomery County, Maryland, recently ordered that all schools in the county – including private and parochial schools – were prohibited from reopening for in-person instruction in the fall through at least October 1.¹ One-size-fits-all orders such as these are troubling. In Montgomery County, the local government officials have sought to prevent private schools and parochial schools from reopening for in-person instruction despite following public health guidance.

To enforce their policy, Montgomery County officials threatened private schools with criminal liability, saying that those who opened for in-person instruction would face misdemeanor charges, up to a year in prison, and a fine of up to \$5,000.² This is an outrageous abuse of power and an action taken without analysis of the circumstances. The moratorium on in-person instruction was announced notwithstanding any consideration of schools' exhaustive preparations to ensure the safety of students and teachers. It was announced without any consideration of schools' sizes or ability and willingness to rigorously implement public health guidance. And it was announced without any consideration of the decisions that parents had already made about whether their children should take advantage of in-person instruction options.

Fortunately, the governor of Maryland issued an executive order that only permits local health officials to shut down a private or parochial school for cause on a case-by-case basis.³ Montgomery County officials initially persisted in the face of the executive order, issuing a new

¹ Hannah Natanson, *Montgomery County health officials tell private schools to start school online*, THE WASH. POST (Aug. 1, 2020), https://www.washingtonpost.com/local/education/montgomery-county-health-officials-tell-private-schools-to-start-school-online/2020/08/01/64552b9e-d3fd-11ea-9038-af089b63ac21_story.html.

² *Id.*

³ Erin Cox & Donna St. George, *Hogan curtails power of local health officers to order blanket school closures*, THE WASH. POST (Aug. 3, 2020), https://www.washingtonpost.com/local/education/hogan-private-schools-coronavirus/2020/08/03/845833d2-d5ab-11ea-aff6-220dd3a14741_story.html.

order⁴ prohibiting private schools from reopening through at least October 1st.⁵ That order was rescinded by the County on August 7.⁶

We are concerned that other jurisdictions around the country may also fail to consider the careful planning of private and parochial schools, even when those schools comply with public health requirements. If schools follow public health requirements, they should be able to make their own decisions about whether and how to reopen, and students should not be deprived of such opportunities. This is especially true given the child-care crisis confronting our nation. Government officials must consider schools' plans on a case-by-case basis and refrain from issuing blanket orders that foreclose the possibility of in-person instruction blindly across the board when schools are operating cautiously.

The Centers for Disease Control and Prevention (CDC) recognizes the importance of in-person education, and that “the harms attributed to closed schools on the social, emotional, and behavioral health, economic wellbeing, and academic achievement of children, in both the short- and long-term, are well-known and significant.”⁷ The CDC also notes that low-income, minority children, and those living with disabilities are particularly at risk to the harms presented by closed schools.⁸ Additionally, the American Academy of Pediatrics recently recommended that “all policy considerations for the coming school year should start with a goal of having students physically present in school.”⁹

To determine how Congress should address this issue and ensure that private and parochial schools are not unnecessarily shut down, we request a staff-level briefing from the Department of Education to update the Committee on its efforts to ensure schools are safely reopening for children, as well as to answer the following questions:

1. Does the Department of Education agree that private and parochial schools should be able to make their own decisions about whether to reopen for in-person instruction?

⁴ Maryland Department of Health and Human Services, Health Officer Directive and Order Regarding Nonpublic Schools (August 5, 2020) *available at*

<https://www.montgomerycountymd.gov/covid19/Resources/Files/HealthDirective-NonPublicSchools.pdf>.

⁵ Simon Romero, et. al., *If Public Schools are Closed, Should Private Schools Have to Follow?*, THE N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/05/us/schools-reopening-private-public.html>.

⁶ Erin Cox, et. al., *Montgomery County rescinds ban on private schools reopening this fall*, THE WASH. POST (Aug. 7, 2020), https://www.washingtonpost.com/local/md-politics/hogan-montgomery-private--schools-/2020/08/07/e2c6bdb2-d7fe-11ea-9c3b-dfc394c03988_story.html.

⁷ U.S. Centers for Disease Control and Prevention, *The Importance of Reopening America's Schools this Fall* (Jul. 23, 2020) *available at* <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html>.

⁸ *Id.*

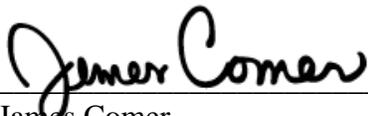
⁹ *COVID-19 Planning Considerations: Guidance for School Re-entry*, AM. ACAD. OF PEDIATRICS (Jun. 25, 2020), <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>.

2. Has the Department of Education conducted a legal analysis of whether a local government may prohibit all private schools in that jurisdiction from reopening notwithstanding that school's adherence to public health guidelines? If so, please provide that analysis to the Committee.
3. Whether or not such orders are legally valid, what measures are available to the Department of Education to prevent punitive measures taken by public officials against private and parochial schools who seek to reopen consistent with public health guidance?
4. How will the Department of Education ensure that schools are permitted to reopen consistent with CDC guidelines for in-person instruction to prevent the serious harms associated by closed schools?

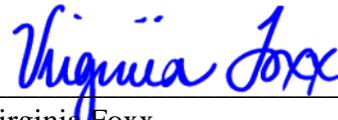
To schedule the briefing or ask any follow-up or related questions, please contact Committee on Oversight and Reform staff at (202) 225-5074.

The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



James Comer
Ranking Member
House Committee on Oversight
and Reform



Virginia Foxx
Ranking Member
House Committee on Education
and Labor



Paul A. Gosar, D.D.S.
Member of Congress



Jody B. Hice
Member of Congress



Glenn Grothman
Member of Congress

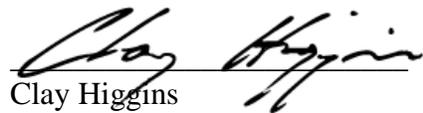


Bob Gibbs
Member of Congress

The Honorable Betsy D. DeVos

August 13, 2020

Page 4



Clay Higgins
Member of Congress



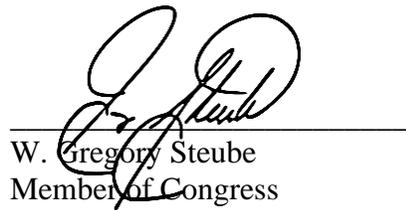
Ralph Norman
Member of Congress



Carol D. Miller
Member of Congress



Kelly Armstrong
Member of Congress



W. Gregory Steube
Member of Congress



Fred Keller
Member of Congress

cc: The Honorable Carolyn B. Maloney, Chairwoman
House Committee on Oversight and Reform

The Honorable Bobby Scott, Chairman
House Committee on Education and Labor