



February 10, 2019

Sent via email: EDFOIAManager@ed.gov

U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Ave., S.W.
LBJ 2W218-32
Washington, D.C. 20202-4536

Attn: FOIA Public Liaison

Re: Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of Education (“ED”) regulations.

First, CREW seeks any and all communications to or from Betsy DeVos, Secretary of Education, Dr. Mitchell Zais, Deputy Secretary, Reed Rubinstein, Principal Deputy General Counsel, Delegated the Duties of General Counsel, Liz Hill, Communications Director, Delegated the duties of Assistant Secretary, Office of Communications and Outreach, or Nate Bailey, Chief of Staff regarding Janiyah Davis or her mother Stephanie Davis’s attendance at the State of the Union address, between November 1, 2019 and February 3, 2020.

Second, CREW seeks any and all communications to or from Betsy DeVos, Secretary of Education, Dr. Mitchell Zais, Deputy Secretary, Reed Rubinstein, Principal Deputy General Counsel, Delegated the Duties of General Counsel, Liz Hill, Communications Director, Delegated the duties of Assistant Secretary, Office of Communications and Outreach, or Nate Bailey, Chief of Staff regarding any Olney Christian School student’s attendance at the State of the Union address, between November 1, 2019 and February 3, 2020.

Third, CREW seeks any and all communications to or from Betsy DeVos, Secretary of Education, Dr. Mitchell Zais, Deputy Secretary, Reed Rubinstein, Principal Deputy General Counsel, Delegated the Duties of General Counsel, Liz Hill, Communications Director, Delegated the duties of Assistant Secretary, Office of Communications and Outreach, or Nate Bailey, Chief of Staff regarding Secretary DeVos personally funding a scholarship for Janiyah Davis, between November 1, 2019 and February 5, 2020.

Fourth, CREW seeks any and all communications to or from Marcella Goodridge-Keiller, Designated Agency Ethics Official, regarding Secretary DeVos personally funding a scholarship for Janiyah Davis, between November 1, 2019 and February 5, 2020.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, as well as those who were cc'ed or bcc'ed on any emails.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and department regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. See 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

On February 4, 2020, President Donald Trump delivered the State of the Union Address before a joint session of Congress. During the address the President discussed school choice stating:

[F]or too long, countless American children have been trapped in failing government schools. To rescue these students, 18 States have created school choice in the form of Opportunity Scholarships. The programs are so popular, that tens of thousands of students remain on waiting lists. One of those students is Janiyah Davis, a fourth grader from Philadelphia. Janiyah's mom Stephanie is a single parent. She would do anything to give her daughter a better future. But last

year, that future was put further out of reach when Pennsylvania's Governor vetoed legislation to expand school choice for 50,000 children. Janiyah and Stephanie are in the gallery this evening. But there is more to their story. Janiyah, I am pleased to inform you that your long wait is over. I can proudly announce tonight that an Opportunity Scholarship has become available, it is going to you, and you will soon be heading to the school of your choice!¹

Although the President's speech suggested that Davis's scholarship was government-funded, it wasn't immediately clear where the funding was coming from.² During the speech, President Trump proposed a federal tax credit program that could make more scholarship money available to students, but that legislation has not moved forward in Congress.³ Later in the week, a Department of Education spokeswoman confirmed to CNN that Secretary DeVos would "pay for a year of tuition at the school of Davis' choice as part of DeVos' regular donation of her federal salary to charitable causes."⁴ The Department did not answer additional questions about the mechanics of the payment.⁵ The DeVos spokeswoman said "The White House and the Department worked together to find a very deserving family who had applied for a scholarship and wanted to send their child to a school that best fit their needs."⁶

Providing academic scholarship to needy children is a laudable goal, but the mechanics of the President's announcement and the Secretary's payment of this scholarship raise concerns that she is making a personal gift at the behest of the President for his political gain. The documents requested will reveal how Secretary DeVos and the Department of Education identified their scholarship recipient and whether the White House put political pressure on DeVos to award it. In addition, the documents requested will reveal whether the Department of Education consulted with agency ethics officials before awarding this scholarship and inviting Ms. Davis and her mother to the State of the Union to be recognized by the President.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

¹ Sanya Mansoor, [Read the Full Transcript of President Trump's 2020 State of the Union Address](https://time.com/5777857/state-of-the-union-transcript-2020/), *Time*, Feb. 5, 2020, available at <https://time.com/5777857/state-of-the-union-transcript-2020/>.

² Katie Lobosco, [Betsy DeVos will personally fund scholarship Trump awarded to fourth-grader at the State of the Union](https://www.cnn.com/2020/02/06/politics/betsy-devos-sotu-school-choice-scholarship/index.html), *NBC12*, Feb. 6, 2020, available at <https://www.cnn.com/2020/02/06/politics/betsy-devos-sotu-school-choice-scholarship/index.html>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website, which has been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or aweismann@citizensforethics.org. Also, if CREW's request for expedition and/or a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me either at aweismann@citizensforethics.org or Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1101 K Street, N.W, Suite 201, Washington, D.C. 20005. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anne L. Weismann', written in a cursive style.

Anne L. Weismann
Chief FOIA Counsel