IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP), *et al.*,

Plaintiffs,

vs.

ELISABETH "BETSY" D. DEVOS, in her official capacity as the United States Secretary of Education, and the UNITED STATES DEPARTMENT OF EDUCATION,

Defendants.

Case No. 1:20-cv-01996 (DLF)

DECLARATION OF WENDY LECKER IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTIVE RELIEF OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

1. My name is Wendy Lecker. I am an attorney for the plaintiffs in the above-referenced matter. I submit this declaration regarding the students and schools in the Clark County, Nevada School District ("CCSD") and the effect on CCSD of the United States Department of Education's (the "Department") July 1, 2020 interim final rule entitled *CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools*, 85 Fed. Reg. 39,479. (the "Rule"), and corresponding federal regulations, *see generally* 34 C.F.R. § 76.665.

2. I have compiled the information in the statements set forth below through a review of publicly available documents and data.

3. CCSD has 360 public schools and a total enrollment of approximately 331,921 students. CCSD enrolls approximately 66% of all the public school students in Nevada. In 2018-19, CCSD's student population was 46% Latinx, 24% White, 14% African American, 7% Multiracial, and 6% Asian. Among CCSD students, 69% were eligible for free and reduced-

price lunch and breakfast, 17% were English Language Learners, and 12% were students with disabilities.

4. CCSD has approximately 209 Title I schools.

5. In the 2019-20 school year, there were 15,238 students residing in Clark County who attended private schools. Of those students, 2,666 were from low-income families.

6. The superintendent of CCSD has stated that the district needs increased funding of $91–93 million to respond to the effects of the COVID-19 pandemic.

7. Per-pupil spending in CCSD is below national and state averages, and below that of all comparably-sized districts nationwide. For FY2021, the Nevada State Legislature cut $156,694,140 from the K-12 education budget statewide. Because CCSD serves 66% of the public-school students in the state, the majority of this cut will fall on the district. Included in the funding cut from CCSD is $55,333,200 of state education-formula funding designated in Nevada law, specifically Nevada S.B. 178, to support English Language Learners and students living in poverty. Additionally, CCSD lost approximately $18 million with the elimination of the statewide Read by Grade 3 program. Funding for class-size reduction was also eliminated.

8. CCSD anticipates receiving $83,968,770 from the Coronavirus Aid, Relief, and Economic Security Act's ("CARES Act") Act's Elementary and Secondary School Emergency Relief ("ESSER") Fund.

9. CCSD intended to use CARES Act funds to purchase Chromebooks (laptops) and instructional materials for students districtwide, improve hotspots for internet connectivity, and purchase personal protective equipment ("PPE"), including masks for all students.

10. Under the Rule, CCSD must choose one of two options for calculation of equitable services funding. Under Option 1, the district must set aside a share of its CARES Act funding for equitable services proportionate to the total number of private-school students residing in the

district, rather the proportion of low-income students. Under Option 2, the district can calculate its equitable services funding based on the proportion of low-income private school students, but then must comply with restrictions on the use of the rest of its CARES Act funding. Specifically the district may not use that funding in any non-Title I schools and must follow the "supplement, not supplant" rule.

11. If CCSD set aside funding for equitable services under the calculation in Section 1117 of the Elementary and Secondary Education Act of 1965 ("ESEA"), *i.e.*, based on the number of low-income students residing in the district who attend private schools, it would be required to set aside $714,850 for equitable services.

12. Under Option 1 in the Rule, calculating equitable services funding based on the proportion of total private school students, rather than low-income private school students, CCSD would be forced to set aside $2,311,069 for equitable services. This amount is $1,596,219, or 223% more, than if the calculation were performed according to Section 1117 of the ESEA.

13. Under Option 1, CCSD would have significantly less CARES Act funding available to pay for the resources that the superintendent has identified as critical for re-opening safely and/or providing effective distance-learning opportunities for its students.

14. If the district chose Option 2 under the Rule, because of the "supplement, not supplant" requirement, it would be forbidden from using CARES Act funds to pay for staff, services, and programs previously funded by state dollars, such as: class size reduction, restoration of the Read by Grade 3 program, S.B. 178 funding designated to support English Language Learners and students living in poverty, and other resources lost in this year's budget cuts. In choosing Option 2, the district would be unable use CARES Act funds as planned to pay

for the following in its non-Title I schools: Chromebooks and instructional materials for studentsd, improved hotspots for internet connectivity, and PPE, including masks for students.

I declare under penalty of perjury under that the foregoing is true and correct. Executed on August 11, 2020.



WENDY LECKER