

EXHIBIT B



September 11, 2018

VIA EMAIL

Gregory Smith
Director, FOIA Service Center, Office of Management
Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-4536
EDFOIAManager@ed.gov

Re: Freedom of Information Act Records Request

Pursuant to the Freedom of Information Act (the "FOIA"), 5 U.S.C. §§ 552 *et seq.*, and the Department of Education ("ED" or "Department") FOIA regulations at 34 C.F.R. pt. 5, Democracy Forward Foundation makes this request on behalf of the Giffords Law Center to Prevent Gun Violence ("Giffords Law Center"), one of the nation's leading policy organizations dedicated to preventing gun violence; the Southern Poverty Law Center ("SPLC"), a nonprofit legal advocacy organization dedicated to fighting hate and bigotry and to seeking justice for the most vulnerable members of our society, including on behalf of the nation's schoolchildren; and the American Federation of Teachers ("AFT"), the largest union of American educators which represents 1.7 million members in more than 3,000 local affiliates nationwide.

On August 22, 2018, The New York Times reported that Secretary of Education Betsy DeVos was considering whether to allow states to use federal funds to arm school teachers with guns.¹ News reports state that the issue arose following inquiries from the States of Texas and Oklahoma.² Thereafter, Secretary DeVos stated in an August 31, 2018, letter to Congress that the Department of Education would take no action "concerning the purchase of firearms or firearms training for school staff."³

This action is dangerous and unprecedented. Congress has consistently, on a bipartisan basis, opposed the use of federal funds to purchase weapons; and there has been no recent action by Congress that would support Secretary DeVos's actions. The funds at issue, also known as Title IV-A funds, are those distributed to states and local school districts via Student Support and Academic Enrichment grants, authorized by the Every Student Succeeds Act ("ESSA"). Allowing states to use these funds to purchase guns is inconsistent with the purpose and text of the statute.

To better understand, and explain to the public, the Department's decision-making regarding the possible use of ESSA funds for weapons, Democracy Forward on behalf of Giffords Law Center, SPLC, and the AFT, requests the Department of Education produce the following on an expedited basis:

¹ <https://www.nytimes.com/2018/08/22/us/politics/betsy-devos-guns.html>.

² <https://www.politico.com/story/2018/08/23/betsy-devos-guns-in-schools-750219>

³ https://www.washingtonpost.com/local/education/devos-leaving-it-to-states-whether-to-use-federal-money-to-buy-guns-for-schools/2018/08/31/947ec06c-ad46-11e8-8a0c-70b618c98d3c_story.html?utm_term=.3794c13f6796.

1. The letter (or other communication) that the Department of Education reportedly received from Oklahoma state or local school officials asking whether ESSA funds could be used to fund the purchase of guns.
2. All other records revealing communications or meetings between the Department of Education and Oklahoma state or local school officials regarding the use of federal funds to purchase guns for use in schools.
3. Any and all records discussing the letter (or other communication) that the Department of Education received from Oklahoma state or local school officials regarding whether ESSA funds could be used to fund the purchase of guns.
4. All communications between Texas, Oklahoma, or any local school districts within those states, and their respective Title IV-A program officers at the Department of Education that discuss the permissible uses of Title IV-A funds.
5. Any and all records in the Office of the Secretary, the Office of the Deputy Secretary, including the Risk Management Service and its four sub-teams, and the Office of Elementary and Secondary Education, including the Office of Safe and Healthy Schools, discussing or referring to the use of Title IV-A funds for the purchase of guns or weapons, including the decision by Secretary DeVos, as articulated in her August 31, 2018 letter, not to take action on that issue.
6. Any and all communications between any state or local education officials other than Texas and Oklahoma and the Department of Education, including with any program officer involved in the administration of Title IV-A funds or any employee in the Department's Office of Safe and Healthy Students, concerning the use of Title IV-A funds for the purchase of guns or weapons.

Scope of Search

The time period for the request is January 20, 2017 to the present.

For speed of processing, a rolling release of records is requested.

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, attachments text messages, instant messages, slack messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See id.* § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-

disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

Please respond to this request in writing within 20 working days as required under 5 U.S.C.

§ 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Fee Waiver Request

Giffords, SPLC, and the AFT request a waiver of document search, review, and duplication fees because the disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Based on their plans to educate the public regarding the content of the records sought, the groups also request a waiver of search fees on the ground that they qualify as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

The disclosure of requested records is “likely to contribute significantly to public understanding of the operations or activities of the government” because, as discussed above, news accounts underscore the substantial public interest in the records sought through this request. 5 U.S.C. § 552(a)(4)(A)(iii). Given the ongoing and widespread media attention on proposals to arm teachers,⁴ including in The New York Times story discussed above, the records sought will contribute significantly to public understanding of an issue of profound public importance. Moreover, Giffords Law Center and SPLC are nonprofit organizations organized under Internal Revenue Code § 501(c)(3) and dedicated to promoting policy engagement and civic education, and the AFT is a labor union organized under Internal Revenue Code § 501(c)(5). As nonprofit organizations, they do not have a commercial interest in the records. The records obtained from this request will be made available to the public at no cost.

Giffords Law Center, SPLC, and the AFT also request a waiver of search fees because they are “representative[s] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The groups meet the definition of “representative[s] of the news media” because they gather information, exercise editorial discretion in selecting and organizing documents, and “distribute[] the resulting work to the public.” *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C.

⁴ See, e.g., <https://www.theatlantic.com/education/archive/2018/08/the-audacity-of-arming-teachers-with-federal-dollars/568387/>; <https://www.npr.org/2018/02/26/588865775/renewing-call-to-arm-teachers-trump-tells-governors-the-nra-is-on-our-side>; https://www.washingtonpost.com/politics/white-house-vows-to-help-arm-teachers-and-backs-off-raising-age-for-buying-guns/2018/03/11/14da0c8e-253a-11e8-bc72-077aa4dab9ef_story.html?utm_term=.83536ea9cd79; https://www.washingtonpost.com/local/education/virginia-governor-assails-school-systems-plan-to-arm-teachers/2018/07/25/2d805436-9034-11e8-b769-e3fff17f0689_story.html?utm_term=.6b3faff70773

Cir. 1989). Giffords Law Center’s website includes numerous publications⁵, fact sheets⁶, and a blog⁷ about gun policy news and information. It also maintains an active social media presence to education the public about gun policy news and information.⁸ It is therefore a “representative of the news media” for the same reasons it is “primarily engaged in disseminating information.” 5 U.S.C. §§ 552(a)(4)(A)(ii)(II), 552(a)(6)(E)(v)(II).⁹ SPLC’s website includes publications on key civil rights issues;¹⁰ information and resources for educators;¹¹ and news regarding, among other things, its children’s rights litigation;¹² it also maintains an active social media presence to disseminate information about crucial social justice issues.¹³ AFT publishes a quarterly magazine for preK-12 educators¹⁴ and numerous regular newspaper columns and blogs¹⁵ to provide information to educators and the public about education news and policy.¹⁶

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

Expedited Processing

The Requesters are entitled to expedited processing of this request because there is a “compelling need” for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A “compelling need” is established when there exists an “urgency to inform the public about an actual or alleged Federal Government activity,” when the requester is a “person primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 34 C.F.R. § 5.21(i)(2). In evaluating whether this criterion has been satisfied, courts have been directed to weigh three main factors: “(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, 263 F. Supp. 3d 293, 298–99 (D.D.C. 2017)

The information requested meets the standard for expedition. There is no question that it concerns federal government activity. Based on the public reporting discussed above, the Department of Education has permitted the use of federal funds by states to arm teachers. As discussed above, this action is of extreme public interest, and the question of the use of federal funds to arm teachers is a matter of current exigency to the public. Further, the 2018-2019 school year is just beginning for students in elementary and secondary schools, making the timeliness of this information even more pressing. This is the type of federal government activity about which the public has a compelling and immediate need to know.

⁵ <http://lawcenter.giffords.org/resources/publications/>

⁶ <http://lawcenter.giffords.org/resources/factsheets/>

⁷ <http://lawcenter.giffords.org/resources/blog/>

⁸ <https://twitter.com/GiffordsCourage>, <https://twitter.com/GiffordsCourage>

⁹ The Law Center routinely researches and publishes reports in support of commonsense solutions to the epidemic of gun violence in America. These resources are maintained in the Law Center’s online resource library. *See* Publications, Law Center to Prevent Gun Violence (last visited Aug. 23, 2018), <http://smartgunlaws.org/resources/publications/>.

¹⁰ https://www.splcenter.org/resources?f%5B0%5D=splc_resource_types%3APublication

¹¹ <https://www.tolerance.org/>

¹² <https://www.splcenter.org/news/2018/08/20/following-splc-lawsuit-court-strikes-misleading-fla-ballot-measure-would-have-eliminated>

¹³ <https://www.facebook.com/SPLCenter>

¹⁴ <https://www.aft.org/our-news/periodicals/american-educator>

¹⁵ <https://www.aft.org/our-news/periodicals>

¹⁶ <https://www.aft.org/press/nyt>

Further, the Requestors meet the definition of a “person primarily engaged in disseminating information.” As discussed above, they are nonprofit organizations focused on gun safety and on creating civil, safe, and inclusive public schools. Much of their work involves the creation and publication of research, news, and policy on accessible and welcoming educational environments and gun safety. Specifically, their work includes the following information dissemination:

- Providing extensive, in-depth summaries of federal, state, and local firearm and educational laws and policies.
- Producing reports and analyses concerning firearm and educational legal issues and other training materials, and providing legal experts to speak at seminars, conferences, and other meetings of public officials, the media, and allied organizations in the gun violence prevention movement.
- Providing legal background to journalists on gun and school policy issues.
- Presenting workshops and training for public officials and others regarding educational and gun policy.

The Requestors will use any relevant information obtained in response to this FOIA request as part of their missions to disseminate information regarding gun safety and safe educational environments. Similar organizational work has been found to meet the definition of a person primarily engaged in disseminating information. *See, e.g., Protect Democracy Project, Inc. v. U.S. Dep't of Def.*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017).

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20 day period, please contact Robin Thurston as soon as possible at foia@democracyforward.org or 202-448-9090.

We appreciate your assistance and look forward to your prompt response.

/s/ Robin F. Thurston
Robin F. Thurston
Senior Counsel
Democracy Forward Foundation

CERTIFICATE OF NEED FOR EXPEDITED PROCESSING

I hereby certify that the information provided regarding Giffords Law Center in the request for expedited processing is true and correct. September 10, 2018.

/s/ J. Adam Skaggs
Chief Counsel
Giffords Law Center to Prevent Gun Violence

I hereby certify that the information provided regarding SPLC in the request for expedited processing is true and correct. September 10, 2018.

/s/ Zoe M. Savitsky

Deputy Legal Director
Southern Poverty Law Center

I hereby certify that the information provided regarding AFT in the request for expedited processing is true and correct. September 10, 2018.

/s/ Michelle Ringuette

Assistant to the President for Government Relations
American Federation of Teachers