

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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May 30, 2019

The Honorable Mitchell Zais
Deputy Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Mr. Zais:

We are writing regarding the ongoing refusal of the Department of Education to produce documents regarding the attempt to remove Acting Inspector General Sandra D. Bruce—who was investigating the actions of Secretary Betsy DeVos—and replace her with Deputy General Counsel Philip H. Rosenfelt. The Committee seeks full and prompt compliance with its request for documents and, in addition, now requests a transcribed interview with you regarding the Department’s actions.

On February 19, 2019, Chairman Elijah E. Cummings joined the chairs and ranking members of several other committees in sending a letter to Secretary DeVos requesting several categories of documents, including “all communications ... related to the decision to install Mr. Rosenfelt as Acting Inspector General.” We also sought communications related to “requests that the Office of the Inspector General stop or change, alter, or amend the scope of any planned or ongoing investigation.”¹

During a hearing on February 28, 2019, in response to a question about this request, you testified under oath before the Senate Homeland Security and Governmental Affairs Committee Permanent Subcommittee on Investigations that the Department would “work to expedite response to your inquiries.”²

However, on March 25, 2019, the Department produced only seven pages of documents—none of which was contemporaneous with the attempted removal of Ms. Bruce.³

¹ Letter from Chairman Robert C. “Bobby” Scott, Committee on Education and Labor, Chairman Elijah E. Cummings, Committee on Oversight and Reform, et al., to Secretary Betsy DeVos, Department of Education (Feb. 19, 2019) (online at <https://edlabor.house.gov/imo/media/doc/ED%20OIG%20Follow%20up%20Letter%202-19.pdf>).

² Senate Homeland Security and Governmental Affairs Committee, Permanent Subcommittee on Investigations, *Hearing on China’s Impact on the U.S. Education System*, 116th Cong. (Feb. 28, 2019) (online at www.hsgac.senate.gov/subcommittees/investigations/hearings/chinas-impact-on-the-us-education-system).

³ Letter from Peter L. Oppenheim, Assistant Secretary for Legislation and Congressional Affairs,

Most of the documents were heavily redacted based on exemptions in the Freedom of Information Act (FOIA), which explicitly provides that the statute may not be used to withhold information from Congress.⁴

On April 5, 2019, our staff met with the Department's Acting General Counsel and Assistant Secretary for Legislation and Congressional Affairs. Our staff explained that the Department's production was incomplete and that FOIA redactions were not appropriate in response to this request. Our staff also asked for further information on relevant issues the Department failed to address in its March 25 letter.

Department staff agreed to arrange a call the following week to address these questions. However, over the next month, Department staff cancelled several follow-up calls and refused to respond to questions or concerns despite repeated outreach from our staff. During that time, the Department failed to produce any additional documents in response to our request.

On April 30, 2019, our staff notified Department staff by email that Rep. Mark DeSaulnier, a Member of both the Committee on Oversight and Reform and the Committee on Education and Labor, wanted to speak by phone with the Acting General Counsel regarding the Department's failure to respond to our inquiry. Despite the passage of more than four weeks, the Department is still ignoring this request.

On May 15, 2019, the Acting General Counsel wrote a letter that again refused to provide the requested documents. The letter claimed that our request "seeks deliberations regarding a presidential appointment" and stated that the Department is "unclear about Congress' legislative need and authority over such deliberations."⁵

The Department's belated and baseless claim that you do not understand Congress' legislative and oversight authority is obstructing our investigation and appears to be part of an unprecedented cover-up by the Trump Administration across multiple Executive Branch agencies and departments.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. In addition, House Rule X, clause 3(i) specifically charges the Committee with conducting oversight of "the operation of Government activities at all levels, including the Executive Office of the President."

Department of Education, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 25, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/3.25.19%20Zais%20to%20Cummings%20Cover%20Letter.pdf>).

⁴ 5 U.S.C. § 552 (d) ("This section is not authority to withhold information from Congress.").

⁵ Letter from Reed D. Rubenstein, Acting General Counsel, Department of Education, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (May 15, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/5.15.19%20Cummings.pdf>).

In addition, the Oversight Committee has jurisdiction over the Inspector General Act and the Vacancies Act. The Committee recently approved bipartisan legislation that would require notification of Congress in advance of an Inspector General being placed on administrative leave and would require the President to report to Congress if he does not nominate an Inspector General to fill a vacancy within 210 days.⁶

The Oversight Committee also has jurisdiction to investigate actions that interfere with the independence of Inspectors General, and we have passed numerous legislative proposals to enhance their independence.⁷ Part of our inquiry is intended to determine whether reforms are needed to strengthen existing statutory protections for Inspectors General or Acting Inspectors General.⁸

In this case, the Committee is seeking to determine whether the Department complied with the Vacancies Act, honored the independence of the Office of Inspector General, pressured the Acting Inspector General to drop an investigation, sought to remove the Acting Inspector General, or sought to replace her with a conflicted agency insider.

The Committee has conducted similar investigations in the past involving Inspectors General and has received documents from agencies about the removal of Inspectors General, interference with the independence of Inspectors General, and Inspectors General access to information.⁹

⁶ H.R. 1847, Inspector General Protection Act.

⁷ See, e.g., P.L. 112-199, Whistleblower Protection Enhancement Act of 2012; P.L. 114-307, Inspector General Empowerment Act of 2016; H.R. 202, Inspector General Access Act of 2019.

⁸ See, e.g., 5 U.S.C. Appx. § 3(a) (an inspector general must be appointed “without regard to political affiliation and solely on the basis of integrity and demonstrated ability”); *id.* (prohibiting an agency head or deputy agency head from “prevent[ing] or prohibit[ing] the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena”); *id.* at § 3(b) (requiring the President to notify both Houses of Congress “not later than 30 days before the removal or transfer” of an inspector general).

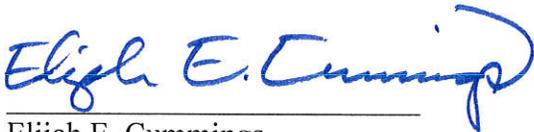
⁹ See, e.g., Letter from Chip Fulghum, Acting Deputy Under Secretary for Management, Department of Homeland Security, to Chairman Jason Chaffetz, Committee on Oversight and Government Reform (Feb. 9, 2015) (providing information on the suspension of the Department of Homeland Security Acting Inspector General); Letter from Archivist of the United States David S. Ferriero, National Archives, to Chairman Darrell Issa, Committee on Oversight and Government Reform, Ranking Member Tom A. Coburn, Committee on Homeland Security and Governmental Affairs, and Ranking Member Charles E. Grassley, Committee on the Judiciary (Aug. 21, 2013) (providing documents and information on the decision to place the National Archives Inspector General on administrative leave); Letter from Chairman Darrell Issa, Committee on Oversight and Government Reform, to Director Betty Sapp, National Reconnaissance Office (Aug. 15, 2013) (requesting documents on allegations that the National Reconnaissance Office “attempted to appoint an Inspector General in a way that compromises the independence of the NRO Office of Inspector General”); Letter from Inspector General Calvin L. Scovel III, Department of Transportation, to Chairman Darrell Issa, Committee on Oversight and Government Reform, Chairman John Mica, Committee on Transportation and Infrastructure, and Ranking Member Charles E. Grassley, Committee on the Judiciary (Mar. 23, 2011) (describing the results of an investigation by the Department of Transportation Office of Inspector General into the departure of the Amtrak Inspector General and proposing legislative reforms).

Rather than cooperate with our investigation, the Department is obstructing Congress' constitutional responsibility to conduct oversight. The Department has repeatedly blocked this inquiry, refused to provide requested documents, made inappropriate redactions to the few documents that were provided, and even ignored a request from a Member of Congress to discuss this matter further.

For all these reasons, the Committee requests that you produce all of the requested documents by June 10, 2019. In addition, the Committee requests that you appear for a transcribed interview on June 13, 2019, in O'Neill House Office Building room 6400.

Please confirm by June 3, 2019, that the Department will produce the requested documents and information and that you will participate in the transcribed interview. If you have any questions, please contact Committee staff at (202) 225-5051.

Sincerely,



Elijah E. Cummings
Chairman



Mark DeSaulnier
Member

cc: The Honorable Jim Jordan, Ranking Member