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9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 **STATE OF MICHIGAN, STATE OF**
 14 **CALIFORNIA, et al.,**
 Plaintiffs,
 15
 16 v.
 17 **ELISABETH D. DEVOS, in her official**
capacity as the United States Secretary of
 18 **Education, and UNITED STATES**
DEPARTMENT OF EDUCATION,
 19
 20 Defendants.

Case No. 3:20-cv-04478-JD

**STIPULATION TO ENTER AN ORDER
 AND JUDGMENT GRANTING A
 PERMANENT INJUNCTION AND
 CLOSING THE CASE**

Date:
 Time:
 Judge: Hon. James Donato
 Trial Date: None set
 Action Filed: July 7, 2020

1 Plaintiffs State of Michigan, State of California, District of Columbia, State of Hawaii,
2 State of Maine, State of Maryland, State of New Mexico, Commonwealth of Pennsylvania, State
3 of Wisconsin, the Board of Education for the City School District of the City of New York,
4 Board of Education for the City of Chicago, Cleveland Municipal School District Board of
5 Education, and San Francisco Unified School District brought suit against Defendants Elisabeth
6 D. DeVos, in her official capacity as the United States Secretary of Education, and the United
7 States Department of Education (Department) alleging, among other contentions, that
8 Defendants violated the Administrative Procedure Act by acting in excess of statutory authority,
9 5 U.S.C. § 706(2)(C), and/or not in accordance with law, 5 U.S.C. § 706(2)(A), by promulgating
10 the interim final rule “CARES Act Programs; Equitable Services to Students and Teachers in
11 Non-Public Schools,” 85 Fed. Reg. 39479 (July 1, 2020) (Interim Final Rule), and by issuing a
12 related guidance document on April 30, 2020 (Guidance).

13 Plaintiffs subsequently sought a preliminary injunction of enforcement of the Interim Final
14 Rule and the Guidance. On August 26, 2020, this Court granted a preliminary injunction
15 prohibiting Defendants from implementing or enforcing against Plaintiffs the Interim Final Rule
16 and the Guidance. That injunction remains in place pending further order of the Court.

17 On September 25, 2020, Secretary DeVos issued a letter stating that the Department would
18 “enforce the law as the courts have opined” and “will not appeal the [courts’] rulings” in this
19 case and in other cases filed throughout the country challenging the Guidance and the Interim
20 Final Rule.¹

21 On October 9, 2020, the Department issued a guidance document replacing the Guidance.
22 This document acknowledges that this Court and two other courts “issued decisions conclud[ing]
23 that an LEA must determine the proportional share available to provide equitable services to
24 non-public school students and teachers in accordance with section 1117(a)(4)(A) of the
25 Elementary and Secondary Education Act of 1965 (ESEA).”²

26 _____
27 ¹ <https://oese.ed.gov/files/2020/09/Secretary-DeVos-Letter-to-Chief-State-School-Officers-09-25-2020.pdf>.

28 ² <https://oese.ed.gov/files/2020/10/Providing-Equitable-Services-under-the-CARES-Act-Programs-Update-10-9-2020.pdf>.

1 Therefore, Plaintiffs and Defendants, having been represented by counsel and acting by
2 and through such counsel, hereby stipulate and consent to the entry of a permanent injunction as
3 follows:

4 1. As to all Plaintiffs and any local or state education agency, school district, or public
5 school located within the geographical boundaries of any Plaintiff (collectively,
6 Plaintiff Parties), the United States Department of Education, Secretary DeVos, and
7 their officers, agents, employees, attorneys, and any person acting in concert with
8 them, or at their behest, are permanently enjoined from:

- 9 a. Enforcing or implementing the provisions in the April 30, 2020 Guidance and
10 the Interim Final Rule, 85 Fed. Reg. 39479 (July 1, 2020), regarding the
11 proportional-share calculation to be used for CARES Act funds for the
12 provision of equitable services to students and teachers in non-public schools
13 under Section 18005 of the CARES Act;
- 14 b. Taking any action inconsistent with calculating the proportional share in
15 accordance with Section 1117(a)(4)(A) of the ESEA, for the provision of
16 equitable services to students and teachers in non-public schools under Section
17 18005 of the CARES Act;
- 18 c. Taking any action enforcing or implementing a requirement that funds provided
19 under Section 18002 or 18003 of the CARES Act supplement, not supplant,
20 other sources of funding or expenditures;
- 21 d. Taking any action enforcing or implementing a restriction on the use of funds
22 provided under Section 18002 or 18003 of the CARES Act based on whether a
23 public school participates or is eligible to participate in a program under Title I,
24 Part A of the ESEA; and
- 25 e. Enforcing or implementing any penalty or taking any other adverse action,
26 including the withholding, termination, suspension, or recovery of funds,
27 against a Plaintiff Party arising out of actions that a Plaintiff Party initiated
28 before the preliminary injunction order, dated August 26, 2020, taken in

1 reliance on the April 30, 2020 Guidance or the Interim Final Rule, 85 Fed. Reg.
2 39479 (July 1, 2020).

3 2. This stipulation is contingent on this Court retaining jurisdiction to enforce this
4 permanent injunction as to any of the Plaintiff Parties.

5 3. Defendants also stipulate to waiving any rights they might have to seek reconsideration
6 of and/or appeal the preliminary injunction and the permanent injunction issued
7 pursuant to this stipulation.

8
9 Dated: November 6, 2020

Respectfully submitted,

10 By: /s/ Garrett Lindsey

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ATTESTATION OF SIGNATURES

I, Garrett M. Lindsey, hereby attest, pursuant to Local Civil Rule 5-1(i)(3) of the Northern District of California that concurrence in the filing of this document has been obtained from each signatory hereto.

Dated: November 6, 2020

/s/ Garrett M. Lindsey

GARRETT M. LINDSEY
Deputy Attorney General
Attorney for State of California