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OFFICE OF PUBLIC INSTRUCTION
STATE OF MONTANA

Putting Montana Students First

May 24, 2021

Re: Docket ID ED-2021-OESE-0061

American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund, Interim Final Rule
RIN 1810–AB64

Re: State Plan Template for the American Rescue Plan Elementary and Secondary School Emergency Relief Fund, OMB Number: 1810-0754

Secretary Miguel Cardona
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Secretary Cardona:

As the elected State Superintendent of Public Instruction in Montana, and on behalf of students and parents across Montana, I am pleased to submit the following Comments on the Department of Education's ("Department") Interim Final Rule ("IFR") requirements for the American Rescue Plan Elementary and Secondary School Emergency Relief ('ARP ESSER'') Fund, under section 2001 of the American Rescue Plan Act ("ARPA") of 2021. Unfortunately, this rule was rushed by the Department and suffers from many flaws that will have a detrimental effect on schools and students in Montana. In the Department's haste to publish burdensome and duplicative requirements, it adopted a "one-size-fits-all" approach that fails to take into account the unique circumstances of individual states and school districts. For example, Montana schools should not be saddled with burdensome return-to-learning plan requirements because other states bowed to special interests and kept schools closed for the 2020-2021 year in direct contradiction to the science.

We, of course, have our own challenges in Montana that the Department overlooked. But LEAs, along with parents and families, should determine how Montana schools meet them—not the federal government. Congress did not intend for ARPA to alter the fundamental paradigm of local control of education in the United States. The Department's approach is not the in the best interests of students and puts bureaucratic bean counting and red tape ahead of innovation and student achievement. I strongly urge the Department to go back and do its homework before issuing the Final Rule.

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General Comments and Objections

The IFR is Arbitrary and Capricious in Violation of 5 U.S.C. § 706

The IFR is arbitrary and capricious in violation of the Administrative Procedure Act (APA). *See* 5 U.S.C. § 706(2)(A). The Department rushed the IFR for no good reason and it shows. The IFR fails to consider important aspects of the problem at multiple junctures. *See Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42, 51 (1983). The most glaring issue with the IFR is that it adopts a one-sized-fits-all approach, which does not take into account important factors such as (1) the rural nature of Montana schools; (2) the fact that most LEAs in Montana have already returned to in-person instruction; and (3) Montana's unique Indian Education for All (IEFA) requirement.

Thirty-nine percent of schools in Montana have an enrollment of less than 50 students. Fifty-four percent of Montana schools have an enrollment of less than 100 students. Many of these small and rural districts lack the capacity to meet the IFR's burdensome reporting provisions. Schools on the frontier face unique challenges and the IFR only enhances those difficulties rather than alleviating them. These requirements, moreover, do not effectuate the purpose of ARPA and do not serve the best interests of students. And the Department has not explained why it adopted such an inflexible and burdensome rule. *Altera Corp. & Subsidiaries v. Comm'r of Internal Revenue*, 926 F.3d 1061, 1080 (9th Cir. 2019) (agency must have "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'") (quoting *State Farm*, 463 U.S. at 43). As a result, the Department's IFR has failed to engage in reasoned decision making as required by the APA. *State Farm*, 463 U.S. at 52.

The IFR and State Plan Template Do Not Recognize Montana's Unique Indian Education for All

As discussed, the Department's one-size-fits-all approach fails to consider important aspects of the problem, including the unique circumstances of every state and LEA. One such aspect—of particular importance to OPI—is Montana's Indian Education for All (IEFA) requirement, embodied in Article X, Section 1 of the Montana Constitution and M.C.A. § 20-1-501. IEFA is key element of Montana's school system and its constitutional obligations. *See Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 2005 MT 69, ¶ 1, 326 Mont. 304, 306, 109 P.3d 257, 259. Montana has unique obligations to provide IEFA that are not reflected in the IFR. Specifically:

- The IFR is focused on quantitative data that does not reflect the unique factors for children that live on Tribal sovereign lands or their schools.

- The IFR does not reflect the tribal membership of Montana students and teachers that serve a most fragile population, giving them rights by treaty for which the IFR has no jurisdiction. The Department's IFR overreaches and ignores these rights.

- The IFR does not reflect the citizenship rights of our unique learners, tribal citizens, state citizens and U.S. citizens. These rights, along with tribal sovereignty, provide

the tribal nation leaders the ability to determine educational opportunities for their citizens. The IFR usurps this right.

- After the 1972 Montana Constitutional Convention recognized these rights, the Montana legislature went a step further in 1999 to include language that states: "every educational agency and all educational personnel will work cooperatively with Montana tribes …when providing instruction and implementing an educational goal." M.C.A. § 20-1-501(2)(b).

- The IFR is absent in recognizing State rights over education, and in the case of Montana's sovereign tribal nations, their rights. This is again evidence of the one-size-fits-all approach of the USDOE that should be abandoned and replaced with a recognition of the individual rights of each State to determine the best uses of funding for their students.

The IFR and State Plan Template Interfere with Local Control of Education

OPI believes that the Interim Final Rule, as well as OESE's State Plan Template for the American Rescue Plan Elementary and Secondary School Emergency Relief Fund, offend basic principles of federalism and the need to preserve state and local control over education. States and local school districts play the primary role in establishing educational policy. The Department of Education Organization Act admonishes the Department not to "exercise any direction, supervision, or control over the … administration … of any educational institution, school, or school system." 20 U.S.C. § 3403(a); *see also Board of Curators, Univ. of Missouri v. Horowitz*, 435 U.S. 78, 90–91 (1978) ("public education in our Nation is committed to the control of state and local authorities"). In the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 ("ESSA"), Congress removed federal burdens on schools and teachers. The goal of ESSA was to give states more flexibility in education. This flexibility empowers states to design policies that meet the unique local needs of their students and communities. The Department should respect these parameters in implementing ARPA.

The IFR Increases Burdens on Education

Taken as a whole, OPI believes the IFR is unduly burdensome on State and Local education. Congress passed the CARES Act, CRSSA, and ARPA with the intent of alleviating burdens on educational providers due to COVID-19, not to increase federal red tape and bureaucracy. OPI strongly disagrees with the Department's estimation that LEAs will need on average 40 staff hours to develop return-to-learning plan. 86 Fed. Reg. at 21204. OPI also disagrees that plan review requirement will require an average of 10 staff-hours. *Id.* Even if accurate, this estimation fails to take into account that some LEAs are more equipped to handle this burden than others. This time and money would be better spent on students and classrooms rather than administrative paperwork. The State Plan Template, moreover, demonstrates the level of micromanaging that the Department intends to impose on districts throughout the reporting period.

The IFR's Requirements will Disrupt the Provision of Education for the 2021-2022 School Year

The IFR imposes burdensome and unpredictable requirements at precisely the time when school districts need consistency and stability to provide educational services to students. Districts are currently planning and finalizing their budgets for the 2021-2022 school year yet are now faced with cumbersome mandates and reporting requirements from the Department—in addition their already high burdens under other federal requirements. Schools should be able to focus on delivering suitable instruction in the fall, not complying with bureaucratic processes.

The IFR Excludes Parents and Families from the Process

The IFR fails to sufficiently involve parents and families in the process. Bureaucratic public comment periods are no substitute for meaningful consultations between schools and parents. This cannot happen under the Department's current rigid framework.

When the pandemic made its landing in Montana, and schools were closed by the former Governor for two weeks, funding from the Governor's office and Congress provided resources for many needs. Schools, through their local school boards, engaged families, businesses, county health officials, and others in creating their plan for the Governor. Local citizens recognized that unity was essential in securing the health and safety of children while building learning opportunities. This collaboration succeeded all over Montana and occurred without consultation with the Department or other federal oversight.

Montanans fiercely defend local control of education. And, to that end, meaningful consultation is woven into all aspects of our education system. Parents—as the foundation of local control—have organized petitions to remove mask mandates, packed board meetings, served on school committees, and orchestrated community advocacy to meet the challenges of the pandemic without unnecessary interference from the Department.

The Interim Final Rule and State Plan Template Improperly Coerce State Governments in Violation of the Tenth Amendment

Any conditions imposed on the use of federal funds must comport with the basic principles of federalism as embodied in the Tenth Amendment. In certain situations, "the financial inducements offered by Congress might be so coercive as to pass the point at which 'pressure turns into compulsion.'" *South Dakota v. Dole*, 483 U.S. 203, 211 (1987) (quoting *Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937)). In *Dole*, the Supreme Court focused on the fact that the funds to be withheld from a state with a drinking age below 21 represented less than 5% of the state's federal highway funds and thus did not view the condition as impermissibly coercing states into complying with the federal program. *Dole*, 483 U.S. at 211 ("When we consider, for a moment, that all South Dakota would lose if she adheres to her chosen course as to a suitable minimum drinking age is 5% of the funds otherwise obtainable under specified highway grant programs, the argument as to coercion is shown to be more rhetoric than fact."). In contrast, ARPA funds are a significant part of the State's budget. Montana is receiving over $382 million in ESSER III funding from ARPA, amounting to an astronomically higher percentage than the program at issue in *Dole*. A prime example of when the government has "crosse[d] the line from enticement to coercion" was in *National Federation of Independent Business (NFIB) v. Sebelius*, 567 U.S. 519

(2012), where the Supreme Court said that the threatened loss of federal program funds, which made up 10% of an average state's budget, represented a "gun to the head" and was a form of "economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion." *Id.* The Department should revise the IFR to comply with *Dole* and *Sebelius*.

Proposed Global Change: The Department should provide waivers for all LEA Plan requirements that are not mandated by statute in ARPA and/or do not reflect the practical circumstances in each school. In particular, the Department should waive (1) LEA Return to In-Person Instruction requirements (including the requirement of meaningful consultation) for schools that have already safety returned to in-person instruction; and (2) reporting requirements for small and rural LEAs that do not have the resources to comply with new federal mandates.

Specific Comments and Objections

LEA ARPA ESSER Plans, 86 Fed. Reg. 21198-21199

The Department's Reporting and Accountability Requirements are Cumbersome for LEAs and Detrimental to Montana Teachers

OPI objects to the IFR and State Plan's reporting and accountability requirements as unduly cumbersome and restrictive on schools. *See* 86. Fed. Reg. at 21198; State Plan Template § G(1) (Monitoring and Measuring Progress). Accountability should not come in the form of micromanaging by the federal government. Montana schools are accountable stewards of taxpayer dollars. The Department already has adequate mechanisms for investigating misuse of funds without resorting to the burdensome requirements in the IFR. Montana teachers, moreover, should be able to focus on teaching and administrators should be able to focus on leading their teachers. Any time spent on LEA plans reduces time spent on student instruction and therefore negatively impacts the quality of education and student achievement.

The State Plan Template's Section G on Monitoring and Measuring Progress is an affront to local control of education. First, the IFR requires plans to be data, not child, driven. That is completely backwards. Second, these reporting requirements require LEAs to collect data for categories that do not currently exists. Specifically, OPI points to the operational model of each school, chronic absenteeism, and learning loss—when most of Montana schools continued learning regardless of whether brick and mortar schools were open. Thus, LEAs cannot meet the Department's requirements without undertaking entirely new programs and measures at the sole direction of the federal government. *See, e.g.*, State Plan Template § G(1)(i)-(vi). Because schools lack the mechanism and resources to collect this data, it defeats the entire purpose of ARPA and ESSER to institute such requirements. This significantly interferes with local control of education.

In general, the entire IFR and State Plan Template place a significant burden on teachers—a burden Congress did not intend to impose. It is important for the Department to understand that the burdens of that data collection will be placed upon teachers in classrooms. And that will have a detrimental impact on students as well. COVID-19 has had significant negative impacts on teacher recruitment and retention in Montana. OPI and its LEAs need to focus on improving teacher retention. A key aspect of this is maintaining and increasing qualified classroom teachers. Placing additional burdensome data point collections on teachers in the classroom will drive quality teachers away and hurt Montana schools.

Proposed Change: The Department should reconsider its reporting requirement entirely and develop a system which permits local accountability and the minimal reporting requirements required by ARPA. The Department should not require collection or reporting of data that is not already collected routinely by SEAs and LEAs or waive the requirement for small and rural districts.

LEA Plan for Safe Return to In-Person Instruction and Continuity of Services, 86 Fed. Reg. at 21199-21200

The IFR's Return to Learning Plan Requirement is Burdensome and Unworkable for LEAs, 86 Fed. Reg. at 21199-21200

The IFR's requirements for LEAs to submit plans for returning to school and continuity of services—including the "universal and correct wearing of masks"—fail to take into account the rural nature of Montana schools and the unique circumstances of each school district. As Lance Melton, head of the Montana School Boards Association, told *The Daily Montanan* in a May 19, 2021 article, "ESSER I was distributed before the 2021 Montana Legislature, and ESSER II, out of the Trump administration, did not have the same [return to learning plan] requirement." Furthermore, many Montana schools have already been "reopened," in many cases for much of the 2020-2021 school year, and of those, some, through discussions with their local health departments, school boards, and other stakeholders, have already decided to rescind or amend mask and face coverings requirements and mandates in this school year. This portion of the IFR is not only burdensome, but clearly unworkable, because schools across the state of Montana and across the country are in different places when it comes to the necessity and wisdom of universal mask wearing.[1] The science has been clear since the beginning of the 2020-2021 school year. There is nearly no connection between in-person K-12 schooling and the spread of COVID-19.[2]

The IFR's Mask Requirement Exceeds the Department's Authority Under ARPA, 86 Fed. Reg. at 21199-21200

OPI objects to the proposed requirement that each LEA plan address "[u]niversal and correct wearing of masks." 86 Fed. Reg. 21200 n.14. This objection also includes the State Plan Template's requirement in Section B(1)(i) that the SEA describe how it will support the LEAs in implementing universal and correct wearing of masks. State Plan Template at 6-7. These requirements exceed the scope of the Department's authority under ARPA. Any action by the Department to enforce this requirement would be illegal. *See* 5 U.S.C. § 706(A), (C).

Section 2001 of ARPA provides funding to SEAs and LEAs through ESSER III. Pub. L. 117-2. Subsection 2001(E) requires LEAs to reserve at least 20% of their ARPA funds to "address learning loss through the implementation of evidence." *Id.* § 2001(e)(1). ARPA then provides that LEAs "shall use the remaining funds for *any* of the following" and then provides a list of

[1] https://dailymontanan.com/2021/05/19/superintendent-arntzen-recommends-rescinding-mask-mandate-for-remainder-of-school-year/

[2] *See, e.g.*, https://www.npr.org/2020/10/21/925794511/were-the-risks-of-reopening-schools-exaggerated; https://www.washingtonexaminer.com/news/study-low-coronavirus-transmission-schools

authorized uses in subsections (e)(2)(A)-(R). *See id.* § 2001(e)(2) (emphasis added). One such allowable use is: "Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff." § 2001(e)(2)(R).

The plain terms of ARPA make clear that Congress was not intending to require LEAs to use ARPA funds for public health protocols under subsection (e)(2)(R). *City of Arlington v. FCC*, 569 U.S. 290, 296 (2013) (agencies "must give effect to the unambiguously expressed intent of Congress.") (quoting of *Chevron, U.S.A., Inc. v. NRDC, Inc*., 467 U.S. 837, 842-43 (1984)). LEAs possess the discretion use their ESSER III funds for *any* of the permissible categories under ARPA, but not required to spend on any particular category. Thus, the IFR's proposed mask requirement exceeds the Department's authority by requiring LEAs and SEAs to address universal mask wearing. U.S.C. § 706(A), (C).

To be sure, Section 2001(i)(1), requires LEAs to "develop and make publicly available on the local educational agency's website … a plan for the safe return to in-person instruction and continuity of services." First, requiring the LEA plans to be submitted to the Department goes beyond the authority of the Department under ARPA because the plain terms of the statute only require the LEA to post its reopening plan on a website. Second, nothing in § 2001(i) mandates or discusses universal mask wearing or adherence to CDC Guidance—that is only discussed in § 2001(e)(2)(R). Congress hardly intended to apply mask mandates to all schools with such generic language. Such an interpretation of § 2001(i)(1) would have generated controversy and robust discussion in Congress. The Department should not circumvent the political process by mandating masks in schools.

Finally, it is nonsensical to apply the return to school plan requirement for LEAs that have already returned to in-person instruction. While schools have the country have remained closed or delayed reopening due to a variety of factors not in line with science or the best interests of students, including pressure from teachers unions,[3] most schools across Montana have already reopened. Montana LEAs should not be punished or burdened because other SEAs and LEAs across the country failed to act sooner to return students to the classroom.

Proposed Change #1: The Department should modify the Final Rule to make clear that LEA and SEA plans are not required to address masking. LEAs should be able to develop policies that make the wearing of face masks and other coverings optional, voluntary, and a matter of family choice.

Proposed Change #2: The Department should either not require LEAs to submit reopening plans or waive the requirement for LEAs that have already returned to in-person instruction. Alternatively, the Department could deem any LEA that has safety returned to in-person instruction as having satisfied this requirement.

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[3] https://www.edweek.org/teaching-learning/how-teachers-unions-are-influencing-decisions-on-school-reopenings/2020/12

The LEA Plan Requirement Does Not Encourage Innovation or Positive Student Outcomes

The LEA Plan requirement is static, bureaucratic red tape that does nothing to advance education efficiency, flexibility, or progress. Increased time spent managing federal expectations, building and revising multiple plans (in addition to existing federal and state requirements) and complying with onerous data collection takes schools' eyes off the ball for helping children succeed academically and replace that with a need to meet multiple benchmarks to receive funding. This is directly at odds with Secretary Cardona's purported message of "reimage[ining] education" and "building it back better."[4] If the Department truly wanted to address the loss in learning due to the pandemic and create 21st century schools, it would eliminate the reporting requirements and onerous paperwork—allowing schools the opportunity innovate and advance student achievement. The IFR's system is archaic, out-of-touch, and serves the interests of the bureaucracy and lobbyists, not students.

State Plan Template Section E: Supporting LEAs in Planning for and Meeting Students' Needs

OPI objects to certain requirements in Section E(4) as overbroad, inconsistent with the text and purpose of ARPA, and exceeding the Department's authority under both APRA and Title VI of the Civil Rights Act of 1964. Section E(4) of the State Plan Template asks the SEA to "Describe the extent to which the SEA will support its LEAs in implementing additional strategies for taking educational equity into account in expending ARPA ESSER funds." One specific request involves:

Implementing an equitable and inclusive return to in-person instruction. An inclusive return to in-person instruction includes, but is not limited to, establishing policies and practices that avoid the over-use of exclusionary discipline measures (including in- and out-of-school suspensions) and creating a positive and supportive learning environment for all students.

Section E(4) Exceeds OESE's Authority under ARPA

First, this Section exceeds OESE's authority because it contains no specific requirement involving "inclusion" or "equity." ARPA does contain a "Maintenance of Equity" requirement in Section 2004. But that provision concerns spending levels and has specific requirements for school spending that SEAs and LEAs must meet. It has nothing to do with school discipline. The Department's Interim Final Rule, moreover, does not mention or justify the equity and inclusion language from Section E(4), nor does it mention school discipline.

Section E(4) May Be Interpreted to Encourage Race Discrimination

Second, to the extent Section E(4) encourages schools to return students on the basis of race, color, or national origin, OPI objects to this as a violation of Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. The Office for Civil Rights' K-12 COVID-19 Guidance from September 2020 made clear that: "A reopening plan—or any school policy—that prioritizes, otherwise gives preference to, or limits programs, supports or services to students based on their race, color, or national origin— regardless of how that plan is

[4] https://www.future-ed.org/insights-into-education-secretary-designate-miguel-cardona/

formulated—would likely violate Title VI of the Civil Rights of 1964." Questions and Answers for K-12 Public Schools in the Current K-12 COVID-19 Environment, U.S. Department of Education, Office for Civil Rights (Sept. 28, 2020).[5]

Section E(4) Encourages Illegal Racial Quotas and Jeopardizes School Safety

To the extent the Department requires, induces, or implies that SEAs and LEAs revert back to the withdrawn Obama-era school discipline policies contained in *Dear Colleague Letter on Nondiscriminatory Administration of School Discipline* (January 8, 2014) (School Discipline DCL"), OPI objects. It is inappropriate for the federal government to pressure schools to establish racial quotas in school discipline. *See, e.g., Lutheran Church—Missouri Synod v. FCC*, 141 F.3d 344, 350-352 (D.C. Cir. 1998). School discipline decisions should be based on student safety, not race.

The withdrawn School Discipline DCL discussed the legal framework that the Departments of Education and Justice were to employ to analyze complaints of discrimination under Title IV of the Civil Rights Act of 1964 (Title IV), 42 U.S.C. §§ 2000c et seq., and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq., and its implementing regulations, 34 C.F.R. Part 100. The Agencies withdrew and rescinded the School Discipline DCL and associated documents on December 21, 2018 because they advanced policy preferences and positions not required or contemplated by Title IV or Title VI.[6]

This recission came in the wake of the President's Federal Commission on School Safety. The Commission released its report on December 18, 2018. Final Report of the Federal Commission on School Safety (Dec. 18, 2018) ("Report").[7] The Report concluded that the School Discipline DCL relied on principles from an implementing regulation of questionable validity to argue that Title VI prohibits not only intentional discrimination, but also many evenhandedly implemented policies that may nevertheless have a racially disparate impact. *See id.* at 70. Despite the Supreme Court's case law in this area, the School Discipline DCL opted to interpret Title VI's implementing regulation as sufficient to establish a disparate impact theory for certain racial groups in the discipline area. Indeed, the Guidance told schools that even "neutral," "evenhanded" application of school discipline policies—the administration of policies without racial animus or discriminatory intent—can potentially violate this regulation. *Id.* at 71.

This had disastrous consequences. By telling schools that they were subject to investigation, and threatening to cut federal funding because of different suspension rates for members of different racial groups, the School Discipline DCL gave schools a perverse incentive to make discipline rates proportional to enrollment figures, regardless of the appropriateness of discipline for any specific instance of misconduct. In response to OCR investigations involving school data, some school districts reportedly adopted racial quotas in school suspensions.[8] A

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[5] https://www2.ed.gov/about/offices/list/ocr/docs/qa-covid-20200928.pdf
[6] https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201812.pdf
[7] https://www2.ed.gov/documents/school-safety/school-safety-report.pdf
[8] Citing Robby Soave. (November 11, 2014). *Schools implement explicit racial bias in suspensions*. Reason (Describing a Minnesota school system's mandate that suspensions meet a racial "quota" by 2018, and that "every suspension of a black or brown student" be subject to special review and describing it as a response to an investigation by "the Department of Education's Office for Civil Rights."), http://reason.com/ blog/2014/11/11/schools-implement-explicit-racial-bias-i).

school's decision to alter its discipline policies, even if prompted by a concern over racially disproportionate data, may end up resulting in another racial group displaying disproportionate discipline numbers. See Heriot, Gail L. and Somin, Alison, The Department of Education's Obama-Era Initiative on Racial Disparities in School Discipline: Wrong For Students and Teachers, Wrong on the Law (January 1, 2018). Texas Review of Law & Politics, Forthcoming, San Diego Legal Studies Paper No. 18-321.[9]

The School Discipline DCL, as well as Section E(4), improperly interfere with state and local control over education. States and local school districts play the primary role in establishing educational policy, including how to handle specific instances of student misconduct and discipline, and in ensuring that classroom teachers have the support they need to implement appropriate discipline policies. Schools should have the flexibility to enforce disciplinary rules in light of their "need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process." *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 686 (1986). The Department should remove this requirement from the State Plan Template and make clear in the Final Rule that it is not required.

Proposed Change: The Department should remove the school discipline element from the Final Rule or clarify that it is not attempting to reinstate the School Discipline DCL.

Conclusion

I hope that the Department will take these considerations into account when issuing the Final Rule. The IFR's requirements do nothing to recover the losses in learning due to COVID-19 or provide sensible accountability for the use of taxpayer funds. It is in the best interest of Montana's students for the Department to respect local control of education and trust the judgment of parents, teachers, and school districts where the learning is happening.

Sincerely,

Elsie Arntzen
State Superintendent
Montana Office of Public Instruction

[9] http://dx.doi.org/10.2139/ssrn.3104221