

Congress of the United States
Washington, DC 20515

November 1, 2019

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

We write to express our concern about the Department of Education's (the Department) September 17, 2019 notice¹ (Notice) to the Duke-UNC Consortium for Middle East Studies' (Duke-UNC Consortium) regarding its 2018 National Resource Center (NRC) proposal and annual project reports² (APRs). As we have serious questions about the Department's NRC review and evaluation process, we also write to ask for more information.

Title VI's National Resource Center program provides vital funding to universities across the United States to teach foreign languages and endow students with an understanding of the societies from which these languages originate.³ In Fiscal Year 2018, the Department awarded almost \$23 million in NRC funding to 89 different academic programs that study languages and societies from around the world. As the global economy becomes increasingly interconnected and national security concerns take center stage, Title VI's mission to fund foreign language and cultural education has never been more important.

Naturally, the Department has a responsibility to ensure institutions of higher education (IHEs) spend Title VI funds appropriately. However, its review of the Duke-UNC Consortium seems to have taken place outside of a typical process that applies to all applicants or awardees. As a result, we are worried that the Department's Notice may chill academic freedom. Already, professors around the country worry that the Notice may cause a "chilling effect... discourag[ing] debates about controversial issues"⁴ and that "this level of federal interest in details of campus offerings crosses a new, troubling frontier."⁵ Many have condemned the Notice as "a direct threat to academic freedom."⁶

Instead of allowing area experts to determine course content, schools receiving federal funding in the future may feel a need to tailor their curricula to what they believe will please any given administration, at the expense of academic rigor, critical thinking, free expression and independent research. American universities draw fully one-fourth of the entire international student population partly because American higher education offers something many other countries' university systems do not: freedom of thought and expression.⁷ The freedom we give academic institutions and expert faculty to conduct their research and classes as they see fit is a hallmark of higher education in the United States.

In order to mitigate these concerns, the Department should only apply guidelines it has clearly outlined and employ a transparent and methodical review process. These safeguards allow faculty the freedom as experts to determine their own curricula, while ensuring IHEs spend Title VI funds appropriately. We are concerned that the Department's review has not followed this ethos.

The Department's Notice Creates Novel Program Requirements that Appear Tailored to Penalize the Duke-UNC Consortium

The Department's review appears to add requirements beyond those in the statute, regulations, or published guidance. For instance, the Department misleadingly claims that Congress directs grant participants to "provide opportunities and support for... government and business."⁸ In actuality, the Title VI statute directs applicants to "encourage government service in areas of national need, as identified by the Secretary, as well as in areas of need in the education, business, and nonprofit sectors."⁹

Though the statute does not reference job placement rates, the Department's analysis cherry-picks certain Duke-UNC Consortium rates to demonstrate a lack of compliance with a newly-invented Department standard for government job placements. Specifically, the Notice reprimands the Duke-UNC Consortium for failing to place adequate numbers of Foreign Language and Area Studies¹⁰ fellowship graduates in government careers, noting that "35 percent of graduates go to higher education positions [while] only 11 percent to government positions suggest[ing] that there are critical shortcomings and impermissible biases in the programming."¹¹ Yet, 30 percent of these graduates work in business, a statistic absent from the Notice.¹² The Department faults the Consortium for its students' personal choices, even though its actual job placement rates track with the explicit statutory goals of the program.

Additionally, the Department asserts that the academic departments with which the Duke-UNC Consortium collaborates "are not, for the most part, aligned with the requirement that National Resource Centers help students in science, technology, engineering, and mathematics fields achieve foreign language fluency."¹³ Though collaboration with STEM departments is one of ten statutorily authorized activities, it is not a requirement.¹⁴ The Department's inaccurate description of permissible activities as required activities moves the compliance goal-posts for participating institutions.

Likewise, the Department contends that the Duke-UNC Consortium's curricula lacks "balance" because it places a "considerable emphasis...on understanding the positive aspects of Islam."¹⁵ This reveals another novel requirement: "balance."¹⁶ The Title VI statute only requires curricula to offer "diverse perspectives and a wide range of views and generate debate",¹⁷ and not, as the Department writes in its response letter to the Middle East Studies Association¹⁸ (MESA Letter), "balanced perspectives".¹⁹

This new requirement for "balance" serves as the Department's entryway into curriculum planning. In both the MESA Letter and a response letter to the ACLU²⁰ (ACLU Letter), the Department announces its power to dictate NRC curricula as part of its Title VI oversight

responsibilities.²¹ The Department then does exactly that, writing that the Duke-UNC Consortium “must expand its offerings to include, in addition to Islamic studies, the study of other religions that are practiced by significant numbers of people in the region.”²²

We do not believe the Department’s role is to arbitrate which classes, programs, or educational activities are positive or negative, or which perspectives are sufficiently diverse or “balanced.” Educators, not the Department, have the necessary expertise to decide which curricular areas merit focus. The Department’s action here sends a clear and dangerous signal that it will condition access to federal funds on specific curriculum content.

If the Department insists that it cannot conduct oversight of Title VI spending without interfering in postsecondary academic curricula, it should have developed guidelines prior to beginning any investigations. This guidance should be clear, public, and equally applicable to all National Resource Centers. It should provide notice of permissible activities and delineate specific evaluation criteria for requirements such as “diverse perspectives.” The Department should not be in the business of making arbitrary, ad-hoc, and opaque determinations.

We would also like to call attention to the Department’s assumption that courses and programs on Islamic studies only teach “positive aspects” of the religion. This evidences a simplistic understanding of American higher education. Universities and academic experts endeavor to teach students a critical understanding of a topic. The Department’s notice does not articulate why courses on Islamic culture are inappropriately positive in general or in the Duke-UNC case, nor does it explain what negative elements of Islamic culture the Department believes university courses on Islam must cover.

The Department Appears to be Singling Out the Duke-UNC Consortium

The Notice also applies standards inconsistently, targeting the Duke-UNC Consortium while ignoring other programs with similar components. For instance, the Notice asserts that the Duke-UNC Consortium’s instruction in area and cultural studies is not relevant to Title VI, claiming that these activities do not “support the development of foreign language and international expertise for the benefit of U.S. national security and economic stability.”²³ These activities include courses on Iranian art and film, a conference entitled “Love and Desire in Modern Iran” and another focused on Middle Eastern film criticism.²⁴ The Department based this assertion on the Duke-UNC Consortium’s annual project review²⁵ and 2018 grant proposal, arguing that the inappropriate courses and programs on film studies “appear to dominate [the Consortium’s] work.”²⁶ It also cites as evidence cross-listed courses and academic paper titles included in its 2018 grant application.²⁷ While we do not have access to the specific Annual Project Reviews in question for a true comparison, historic course listings and 2018 grant proposals indicate that many other NRCs have proposed and offered similar curricular offerings but are not now facing similar funding withdrawals.

To name only a few such offerings, the University of Pittsburgh’s European Studies Center, which proposed a “EU Film Festival,” collaborates with African studies and Latin American studies departments, and offers several area studies courses every semester on Greek and Roman mythology, civilization, and language.²⁸ And the University of Utah and Brigham Young University’s Intermountain Consortium for Asian and Pacific Studies proposed “Zainichi

Literature” and “Japanese Scrolls in BYU’s Art Collection” as conference themes.²⁹ Many other NRCs offer similar courses in art and history, especially when following the Department’s methodology of tallying cross-listed courses and affiliated faculty papers. Neither the Department’s guidance nor its Notice clarifies why a course on Iranian film studies fails to contribute to national security and economic stability, while one on Ancient Greek Mythology succeeds.

Title VI Funding for Area Studies is Not Contingent on Language Courses

We also disagree with the Department’s contention that courses on history, arts, and culture “should not be funded or subsidized in any way by American taxpayers under Title VI” unless NRCs “clearly demonstrate that such programs are secondary to more rigorous coursework helping American students to become fluent Farsi speakers and to prepare for work in areas of national need.”³⁰ Title VI established NRCs to provide “comprehensive foreign language and area or international studies centers and programs.”³¹ In turn, the statute defines “area studies” as “a program of comprehensive study of the aspects of a society or societies, including study of its history, culture, economy, politics, international relations and languages.”³² The statute is clear that courses on culture and history are permitted and do not need to be secondary to foreign language coursework to be funded by Title VI. Furthermore, the Department’s own regulations establish standards by which such non-language instructional programs will be evaluated. These include the general availability of interdisciplinary courses and “the quality and extent of the Center’s course offerings in a variety of disciplines.”³³ Thus, the Department’s criticism of the Duke-UNC Consortium for offering interdisciplinary and area studies courses not “secondary”³⁴ to language instruction is unwarranted.

We agree with Title VI’s approach. We believe that national security projects cannot succeed without an understanding of a society’s culture and history. Both the U.S. Department of Defense’s (DoD’s) Language Training Center (LTC) Program³⁵ and the National Security Education Program³⁶ take this view, offering grants and scholarships for both language learning and cultural competency.

Alarming, the Department implies in its MESA and ACLU Letters that the Duke-UNC Consortium has been using Title VI funds as “a financing vehicle for political, religious, or ideological advocacy, elevating certain religious or ideological points of view over another.”³⁷ We are extremely concerned that the Department considers area studies courses on Islam to be religious or political propaganda.

Request for Information

As outlined above, we have serious concerns that the Department’s review creates novel requirements targeted at penalizing the Duke-UNC Consortium. As a result, we are worried that the Duke-UNC Consortium is being singled out by the Department. While we believe the Department has a serious responsibility to ensure that universities appropriately spend the taxpayer dollars it awards, such inquiries must not threaten academic freedom. The Department’s public investigation of the Duke-UNC Consortium will reverberate across

American colleges and universities, perhaps causing all institutions to consider whether the federal government will investigate them because of curricula it dislikes.

Accordingly, we request your response to the following questions by November 15, 2019:

1. Grant Documents:

- a. Please provide a copy of any contracts, documents, or paperwork surrounding the awarding of the Duke-UNC Consortium grant and its disbursements during the 2014 and 2018 grant cycles.
- b. Please provide Duke-UNC Consortium Annual Project Reports relating to the 2014 and 2018 grant cycles.

2. NRC Review Procedures: Please provide any documents, communications, or internal guidance detailing the Department's standard review procedures for NRC grants.

- a. Provide documents sufficient to show whether the Department conducted a peer review of the Duke-UNC Consortium based on the country, thematic focus, international studies, or world region such as Africa, Asia, or the Middle East, as specified in the 2018 NRC Guidelines.³⁸ If so, provide a copy of this review and its findings.
 - i. Provide copies of all other peer reviews the Department conducted for this cohort of grants.
- b. Provide documents sufficient to show whether the Department conducted reviews of other NRCs subsequent to the awarding of the 2018 grants. If so, please provide documents sufficient to show all findings from those reviews.

Additionally:

- i. Since 2018 NRC grants were awarded:
 1. How many NRCs, APRs and application grants has the Department reviewed?
 2. How many APRs were reviewed from each global area?
- ii. For FY 2017 and 2018:
 1. How many NRCs, APRs and application grants did the Department review?
 2. How many APRs were reviewed from each global area?
- c. Provide documents sufficient to show the criteria the Department uses to determine whether an academic program advances national security and economic stability.
 - i. Is it now the Department's interpretation of Title VI that national security and economic stability are the only permissible uses of Title VI funding?
 - ii. If not, what other aims does the Department consider allowable?
- d. Provide documents sufficient to show how the Department evaluates whether NRCs have presented the requisite "diverse perspectives" and/or "balance".
- e. What are the Department's plans for making the standards and criteria used to evaluate NRC APRs public?

3. The Duke-UNC Consortium Review:

- a. Please provide all internal documents and communications that relate to the Department's inquiry into the Duke-UNC Consortium.

- b. Please provide all correspondence between the Duke-UNC Consortium (and if relevant, Duke University and the University of North Carolina) and the Department leading up to the September 17 notice, including the Duke-UNC Consortium's June 20, 2019 letter to the Department, and the Department's initial letter prompting the Duke-UNC Consortium's June 20 response.
- c. Please provide a list of all appointed Department officials, schedule C or higher, involved in this matter.
- d. Secretary DeVos wrote in a June 18, 2019 letter that she would direct the Office of Postsecondary Education to "examine the use of funds under this program to determine if the Consortium violated the terms and conditions of the grant,"³⁹ in response to Rep. George Holding's April 14, 2019 letter.⁴⁰ Does the Notice represent the conclusions of this investigation?
- e. The Office for Civil Rights' (OCR) website lists open investigations into Duke University and University of North Carolina at Chapel Hill for Title VI national origin discrimination.⁴¹ Does the Notice represent the conclusions of these investigations, or, are these investigations separate and/or still ongoing?
 - i. Please provide a summary of the alleged discrimination complaint that started these two OCR investigations.
- f. It appears that around September 24, 2019 the Department disbursed Title VI funding to the Duke-UNC Consortium for 2019-2020,⁴² despite its threat in the Notice to withhold funding.⁴³ Why did the Department decide to make this disbursement? Will the Duke-UNC Consortium's funding for upcoming fiscal years be in jeopardy if it fails to follow the Department's directive to "expand its offerings to include, in addition to Islamic studies, the study of other religions that are practiced by significant numbers of people in the region"?⁴⁴ How will the Department evaluate compliance?
- g. What are the Department's benchmarks for acceptable job placement rates that would not indicate bias in Title VI programs?

We request that you respond to these questions by November 15, 2019. Further, we request that you brief Committee staff on the issues outlined in this letter by the same date.

Thank you for your prompt consideration of this matter. If you have any questions or would like to further discuss this request, please contact Kirin Jessel at kirin.jessel@mail.house.gov. Please direct all official correspondence to the Committee's Chief Clerk at Tylease.Fitzgerald@mail.house.gov. Please provide documents or information responsive to this request as it is available. We look forward to receiving your response.

Sincerely,



ANDY LEVIN
House Committee on Education and Labor
Vice Chair



SUSAN A. DAVIS
House Committee on Education and Labor
Chair, Subcommittee on Higher Education
and Workforce Investment

¹ Notice of a Letter Regarding the Duke-UNC Consortium for Middle East Studies, 84 Fed. Reg. 48,919 (Sept. 17, 2019).

² The Department has also referred these reports at various times as “Annual Progress Reports” and “Annual Performance Reports.” We mean the annual reports submitted by NRCs to the Department of Education via the International Resource Information System (IRIS) that the Department uses to determine yearly continuation funding. See *National Resource Centers Program: Performance*, U.S. Dep’t of Educ., <https://www2.ed.gov/programs/iegpsnrc/performance.html> (last visited Oct. 22, 2019).

³ 20 U.S.C. § 1122.

⁴ Sarah Brown, *Education Dept. Takes Aim at a Center on Middle East Studies. Scholars Say That Could Chill Academic Freedom*, *The Chron. of Higher Educ.* (Sept. 22, 2019), <https://www.chronicle.com/article/Education-Dept-Takes-Aim-at-a/247202/>.

⁵ *Id.*

⁶ *Id.*

⁷ *International Students in the United States*, Migration Policy Institute (May 9, 2018), <https://www.migrationpolicy.org/article/international-students-united-states>.

⁸ Notice, 84 Fed. Reg. at 48,920.

⁹ 20 U.S.C. § 1122 (e)(2).

¹⁰ Foreign Language and Area Studies Fellowships Program. This is a separate Department competitive grant program to NRCs to fund fellowships for undergraduate and graduate students. For more information, see *Foreign Language and Area Studies Fellowships Program*, U.S. Dept. of Educ., <https://www2.ed.gov/programs/iegpsilasf/index.html>.

¹¹ Notice, 84 Fed. Reg. at 48,920.

¹² University of North Carolina at Chapel Hill, *2018 Duke-UNC Consortium for Middle East Studies Application for Grants under the National Resource Centers and Foreign Language and Area Studies Fellowships* (Closing Date Jun. 25, 2018) at e47. Retrieved from https://iris.ed.gov/downloads/applications/P015A180014/P015A180014_GrantApplication.pdf.

¹³ Notice, 84 Fed. Reg. at 48,920.

¹⁴ 20 U.S.C. § 1122 (a)(2).

¹⁵ Notice, 84 Fed. Reg. at 48,920.

¹⁶ Upon review of all of the Department’s Federal Register notices containing the term “National Resource Center,” it is evident that the Department has never before required “balance.”

¹⁷ 20 U.S.C. § 1122 (e)(1).

¹⁸ Letter from Robert L. King, Assistant Sec’y of Educ., to Middle Eastern Studies Association (October 9, 2019) (on file with author).

¹⁹ *Id.*

²⁰ Letter from Reed D. Rubinstein, Principal Deputy General Counsel delegated the Authority and Duties of the General Counsel at Dept. of Educ., to the American Civil Liberties Union (October 18, 2019) (on file with author).

²¹ Letter from Reed D. Rubinstein, Principal Deputy General Counsel delegated the Authority and Duties of the General Counsel at Dept. of Educ., to the American Civil Liberties Union (October 18, 2019) (on file with author); Letter from Robert L. King, Assistant Sec’y of Educ., to Middle Eastern Studies Association (October 9, 2019) (on file with author).

²² Letter from Robert L. King, Assistant Sec’y of Educ., to Middle Eastern Studies Association (October 9, 2019) (on file with author).

²³ Notice, 84 Fed. Reg. at 48,920.

²⁴ *Id.*

²⁵ Letter from Robert L. King, Assistant Sec’y of Educ., to Middle Eastern Studies Association (October 9, 2019) (on file with author).

²⁶ *Id.*

²⁷ Notice, 84 Fed. Reg. at 48,920. See UNC, *2018 Duke-UNC Consortium Grant Application* at e34, e156-172.

²⁸ University of Pittsburgh, *2018 European Studies Center Application for Grants under the National Resource Centers and Foreign Language and Area Studies Fellowships* (Closing Date Jun. 25, 2018) at e173, available at https://iris.ed.gov/downloads/applications/P015A180048/P015A180048_GrantApplication.pdf.

²⁹ University of Utah, *2018 Intermountain Consortium for Asian and Pacific Studies Application for Grants under the National Resource Centers and Foreign Language and Area Studies Fellowships* (Closing Date Jun. 25, 2018),

at e25, 277, available at

https://iris.ed.gov/downloads/applications/P015A180062/P015A180062_GrantApplication.pdf.

³⁰ Notice, 84 Fed. Reg. at 48,920.

³¹ 20 U.S.C. § 1122 (a)(1).

³² 20 U.S. Code § 1132 (a)(1).

³³ 34 CFR § 656.21 (f).

³⁴ Notice, 84 Fed. Reg. at 48,920.

³⁵ Li, Jennifer J., Richard S. Girven, and Norah Griffin, RAND Corp., Meeting the Language and Culture Training Needs of U.S. Department of Defense Personnel: An Evaluation of the Language Training Center Program. RAND Corporation (2019), https://www.rand.org/pubs/research_reports/RR2555.html.

³⁶ *Mission and Objectives*, Nat'l Sec. Educ. Program, <https://www.nsep.gov/content/mission-and-objectives> (last visited Oct. 22, 2019).

³⁷ Letter from Reed D. Rubinstein, Principal Deputy General Counsel delegated the Authority and Duties of the General Counsel at Dept. of Educ., to the American Civil Liberties Union (October 18, 2019) (on file with author); Letter from Robert L. King, Assistant Sec'y of Educ., to Middle Eastern Studies Association (October 9, 2019) (on file with author).

³⁸ Applications for New Awards; National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies and Foreign Language and Area Studies Fellowships Program [hereinafter "2018 NRC Guidelines"], 83 Fed. Reg. 24,297 (May 25, 2018). <https://www.federalregister.gov/documents/2018/05/25/2018-11261/applications-for-new-awards-national-resource-centers-program-for-foreign-language-and-area-studies>.

³⁹ Letter from Betsy DeVos, Sec'y of Educ., to Rep. George Holding (June 18, 2019), available at <https://holding.house.gov/uploadedfiles/letter.pdf>.

⁴⁰ Letter from George Holding, Member of Congress, to Betsy DeVos, Sec'y of Educ. (April 15, 2019), available at <https://holding.house.gov/uploadedfiles/conferenceletter.pdf>.

⁴¹ *Pending Cases Currently Under Investigation at Elementary-Secondary and Post-Secondary Search*, Dept. of Educ. (last updated Sept. 27, 2019 at 7:30 AM) <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/open-investigations/tvi.html?queries%5Bstate%5D=NC&queries%5Btod%5D=Title+VI+-+National+Origin+Discrimination+Involving+Religion>.

⁴² Stefanie Pousoulides, *Duke-UNC Consortium received '19-20 funding from the Education Department amid controversy*, The Chron. (Duke University) (Sept. 30, 2019, 2:19 AM) <https://www.dukechronicle.com/article/2019/09/duke-unc-consortium-middle-east-funding-education-department-controversy>.

⁴³ Notice, 84 Fed. Reg. at 48,921.

⁴⁴ Letter from Robert L. King, Assistant Sec'y of Educ., to Middle Eastern Studies Association (October 9, 2019) (on file with author).