



January 28, 2019

U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Avenue, SW, LBJ 7W104
Washington, DC 20202-4536
ATTN: FOIA Public Liaison
Facsimile: (202) 401-0920

RE: FOIA Request for Records Regarding the U.S. Department of Education's grant award for MindUP program in Oregon and other Mindfulness-related grant awards

Dear Sir or Ma'am:

This letter is a request ("Request") in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice ("ACLJ")¹ on behalf of itself and over 65,000 of its members who demand our government be held accountable, and object to the implementation of curriculum that promotes Buddhist meditation techniques to be practiced on schoolchildren at taxpayer's expense. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks records from the U.S. Department of Education (ED) concerning the \$3.3 million grant awarded to Portland State University concerning MindUP, a mindfulness-based social emotional learning (SEL) program to be implemented on preschool-age children in 120 schools in Oregon, as well as other grant funds awarded to implement or test mindfulness programs on children attending public schools. The purpose of this request is to seek information that will educate the American public about the U.S. government's spending of U.S. taxpayer dollars to conduct Buddhism-based social experiments on children.

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

Background

Pursuant to U.S. Department of Education FOIA regulation 34 C.F.R. § 5.20(b), this Background “describe[s] the type of agency record requested, the subject matter of the agency record, the date, if known, or general time period when it was created, and the person or office that created it,” to the extent known.

According to news reports: “A Portland State University professor has won a \$3.3 million federal grant to measure whether a mindfulness program backed by actress Goldie Hawn works to get preschoolers ready for kindergarten.”² Further,

Portland State psychology professor Andrew Mashburn specializes in testing programs to promote school readiness and has already looked into the MindUp program for the Gates Foundation. He won the big five-year grant from the U.S. Department of Education's Institute of Education Sciences to run the program in 120 classrooms in Multnomah, Washington and Clackamas counties and measure if it works, university officials announced Tuesday.³

“The research project, co-led by Pennsylvania State University psychology professor Robert Roeser, will be done in three waves: Multnomah County in 2019-20, Washington County in 2020-21 and Clackamas County in 2021-22. It will target children in public and private preschools that primarily serve low-income students. Mashburn expects to recruit the first set of classrooms next spring.”⁴

As announced by Portland State University, “PSU College of Liberal Arts and Sciences psychology professor Andrew Mashburn will use the grant from the U.S. Department of Education's Institute of Education Sciences to implement the MindUP program in 120 preschool classrooms throughout Oregon's Multnomah, Washington and Clackamas counties.”⁵

The grant award is entitled “Efficacy of MindUP on Pre-Kindergarteners' Development of Social-Emotional Learning Competencies and Academic Skills,” and its grant award number is R305A180374.⁶

This agency has awarded other grants to other state educational institutions. For example, in 2014, \$1.5 million was awarded to the University of Wisconsin for a study to “take place in public

² Betsy Hammond, *Does Goldie Hawn's Preschool Mindfulness Program Work? Portland State Gets \$3 Million to Check*, The Oregonian/OregonLive (July 18, 2018), https://www.oregonlive.com/education/index.ssf/2018/07/does_goldie_hawns_mindfulness.html.

³ *Id.*

⁴ *Id.*

⁵ Cristina Rojas, *PSU Professor Awarded \$3.3M to Study Impact of Kindergarten Readiness Program*, Portland State University (July 16, 2018), <https://www.pdx.edu/clas/news/psu-professor-awarded-33m-study-impact-kindergarten-readiness-program>.

⁶ “Efficacy of MindUP on Pre-Kindergarteners' Development of Social-Emotional Learning Competencies and Academic Skills,” Award Number R305A180374, Inst. of Ed. Sciences (IES), Nat'l Center for Ed. Research (NCER) (2018), <https://ies.ed.gov/ncer/projects/grant.asp?ProgID=7&year=2018&grantid=2190>.

elementary schools in an urban school district in Wisconsin,” with a sample of “[a]pproximately 20-30 teachers and 400 students from fourth and fifth grade classrooms.”⁷ According to the Institute of Education Sciences (IES), National Center for Education Research (NCER), webpage describing the grant:

In this development project, the research team will develop a mindfulness program intended to train attention and emotion regulation in both teachers and students. The goal is to create a comprehensive self-sustaining "train the trainers" model of mindfulness instruction and to further refine training by examining issues of dosage and supports for long-term sustainability to maximize implementation directly within the school context.⁸

A review of the IES/NCER website indicates that many more U.S. Department of Education grants have been awarded for the study and implementation of mindfulness programs on public school children.

To the best of the Requestor’s knowledge and belief, components of the U.S. Department of Education likely to be custodians of the records requested include, but are not necessarily limited to, the Office of the Secretary (OS), the Institute of Education Sciences (IES), and the National Center for Education Research (NCER).

Records Requested

For purposes of this Request, the term “record” means “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recording, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, *e.g.*, electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016)⁹ (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the terms “ED official” or “ED employee” include, but are not limited to, any person who is (1) employed by or on behalf of the U.S. Department of Education, any of

⁷ “A Classroom-based Training Program of Attention and Emotion Regulation,” Award Number R305A140479, Inst. of Ed. Sciences (IES), Nat’l Center for Ed. Research (NCER) (2014), <https://ies.ed.gov/ncer/projects/grant.asp?ProgID=21&grantid=1530>.

⁸ *Id.*

⁹ *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016).

its components, institutes, or centers, in any capacity; or (2) contracted for services by or on behalf of the U.S. Department of Education, any of its components, institutes, or centers, in any capacity.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is January 1, 2012, through the date of receipt of this Request.

Pursuant to FOIA, 5 U.S.C. § 552, the ACLJ hereby requests that the FDA produce the following records:

1. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any ED official or employee that concern or in any way discuss the grant award entitled "Efficacy of MindUP on Pre-Kindergarteners' Development of Social-Emotional Learning Competencies and Academic Skills," grant award number is R305A180374, including but not limited to all information, documents, or other such material reviewed in connection with the application for and granting of the award, and including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, ED electronic mail or message accounts, non-ED electronic mail or message accounts, personal electronic mail or message accounts, ED servers, or non-ED servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

2. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any ED official or employee that concern or in any way discuss any grant award, other than and excluding the specific award addressed in request #1 above, that concerns in any way mindfulness (as that term is described in the Background section above) in connection to education, including but not limited to all information, documents, or other such material reviewed in connection with the application and granting of any such award, and including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, ED electronic mail or message accounts, non-ED electronic mail or message accounts, personal electronic mail or message accounts, ED servers, or non-ED servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

3. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any ED official or employee that concern or in any way discuss mindfulness programs in connection with education or implementation on children, including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, ED electronic mail or message accounts, non-ED electronic mail or message accounts, personal electronic mail or message accounts, ED servers, or non-ED servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any

electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

4. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any FDA official or employee that show total amounts of grant funds awarded by the ED, any of its components, institutes and/or centers, in connection with any mindfulness program, including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, ED electronic mail or message accounts, non-ED electronic mail or message accounts, personal electronic mail or message accounts, ED servers, or non-ED servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

5. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any FDA official or employee that concern or in any way discuss a religious, spiritual, metaphysical, mystical, transcendental, and/or Buddhist aspect, characteristic or component of MindUP and/or any other mindfulness program (as described in the Background section above), including but not limited to any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, ED electronic mail or message accounts, non-ED electronic mail or message accounts, personal electronic mail or message accounts, ED servers, or non-ED servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

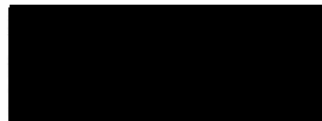
CONCLUSION

If this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, your agency support all denials by reference to specific FOIA exemptions and provide any statutorily or judicially required explanatory information, including but not limited to a *Vaughn* Index.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. The ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director
Abigail Southerland, Senior Litigation Counsel
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jordan Sekulow".

Jordan Sekulow
Executive Director

A handwritten signature in cursive script, appearing to read "Abigail L. Southerland".

Abigail Southerland
Senior Litigation Counsel

A handwritten signature in cursive script, appearing to read "Benjamin P. Sisney".

Benjamin P. Sisney
Senior Litigation Counsel