



April 25, 2018

The Honorable Mac Thornberry
Chairman
House Armed Services Committee
2216 Rayburn H.O.B.
Washington, DC 20515

The Honorable Adam Smith
Ranking Member
House Armed Services Committee
2216 Rayburn H.O.B.
Washington, DC 20515

Dear Chairman Thornberry and Ranking Member Smith,

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On behalf of the American Civil Liberties Union (ACLU) and our more than two million members and supporters, we write to express concern that the Education Savings Accounts for Military Families Act of 2018 (H.R. 5199), introduced last month by Rep. Jim Banks (R-IN), or a similar proposal will be offered as an amendment during markup of the FY 2019 National Defense Authorization Act (NDAA). This legislation would transform Impact Aid into a private school voucher program—specifically through Education Savings Accounts (ESAs)—undermining public school systems serving the majority of military-connected students as well as Native American students. At the same time, such a program would allow public dollars to flow to educational providers free from accountability, and strip students of rights and protections. The proposal is not an effective way to further educational equity, and should be rejected in any form.

Diverting Impact Aid Would Reduce Critical Funding for School Districts Serving Military Connected and Native American Students

Impact Aid provides funding to school districts that have lost local tax revenue due to the presence of federal tax-exempt land—such as military installations, Native American reservations, or national parks—and that face increased expenditures due to the enrollment of federally-connected students—such as children of military families and Native American and Alaska Native students.¹ As of 2016, Impact Aid provided funding to approximately 1,300 school districts enrolling more than 11 million students.² This money serves all students in the district, and the school district can concentrate the funding where it is needed the most. For example, school districts use Impact Aid to hire and train teachers and staff, invest in technology, purchase buses and classroom equipment, and provide educational programming, including for students with disabilities.

¹ Dep't of Educ., About Impact Aid (last visited April 22, 2018), *available at* <https://www2.ed.gov/about/offices/list/oese/impactaid/whatisia.html>

² National Association of Federally Impacted Schools, The Basics of Impact Aid (last visited April 23, 2018), *available at* https://docs.wixstatic.com/ugd/423d5a_58add7d7c31d445ea2ec2ecdb55b7701.pdf.

Turning Impact Aid into a per-pupil allocation, as H.R. 5199 would require, would reduce the funding for critical services that the school districts provide to all students. By concentrating resources away from the public system, this proposal would significantly exacerbate educational disparities, not eliminate them. Over time, as students leave, those who remain in the public school system are left with even less. Reducing Impact Aid funding for public schools would also place a great financial burden on the local community, which would be left to fund public schools with an already low level of local tax revenue. This is particularly unfair to these communities, as many federally impacted school districts pay higher than average taxes because of the lack of taxable property or taxpayers in their communities.

Directly affected stakeholders have already opposed this legislation, including the National Association of Federally Impacted Schools (NAFIS), the National Military Family Association (NMFA), and the National Indian Education Association (NIEA).³ They are joined by The Military Coalition, representing more than 5.5 million current and former service members and their families and survivors.⁴ Additionally, a number of military service organizations have affirmatively expressed support for the continued funding and preservation of the Impact Aid program.⁵

Congress would better serve these federally-impacted communities and military-connected students by fully funding Impact Aid instead of diverting federal funding into a private school voucher plan.

Private School Vouchers Are Harmful Education Policy

This legislation would also hinder educational equity by allowing public money to flow to schools and educational entities that do not need to adhere to federal civil rights laws and public accountability standards that all public schools must meet, including those in Title IX, the Individuals with Disabilities Education Act (IDEA), and ESEA.

For example, private schools can and do turn students away on the basis of students' or their parents' faith, sexual orientation, gender identity, disciplinary history, and disability. Vouchers and ESAs also violate religious liberty by primarily funding religious schools. Parents certainly may choose such an education for their children, but no taxpayer should be required to pay for another's religious education.

Vouchers underserve students with disabilities in particular. A recent Government Accountability Office review found that state voucher programs inconsistently provide information about the rights under IDEA that are lost when enrolling in a private school, like being entitled to a Free Appropriate Public Education. Schools participating in voucher programs also often fail to mention students with disabilities on their websites, and most students enrolled in a program *designed for students with disabilities* were in a program that provided no

³ Joint Statement from NAFIS, NMFA, NIEA (Mar. 8, 2018), *available at* https://docs.wixstatic.com/ugd/423d5a_b5c37b8f5a604d4b87df4e3d5a5d240d.pdf.

⁴ Letter from The Military Coalition to Chairs, Ranking Members of H. Comm. on Education and the Workforce and H. Comm. on Armed Services (Apr. 5, 2018), *available at* <https://static1.squarespace.com/static/582f7c15f7e0ab3a3c7fb141/t/5acb7abf562fa799829d4900/1523284671535/TMC+Education+Savings+Accounts+for+Military+Families+4-5-18.pdf>.

⁵ Joint Statement from Military Child Education Coalition, Military Impacted Schools Association, Military Officers Association of America, NAFIS, and NMFA (Dec. 13, 2017), *available at* https://docs.wixstatic.com/ugd/423d5a_51b5cbe0e5f4e57a47db81a358546a7.pdf.

information about changes in IDEA rights, or inaccurate information.⁶ This may be particularly problematic for military families with school-age children with disabilities, for whom consistency of services is critical in the event they need to relocate. Voucher programs also often fail to provide students with disabilities the same quality of services they would receive in public schools, including those mandated under each student’s individualized education program (IEP).⁷

Proposal Lacks Accountability for Federal Dollars

While diverting needed funds away from public schools, H.R. 5199 would establish an ESA program with an appalling lack of accountability and oversight measures. For instance, it does not require educational service providers to acquire accreditation status, to abide by nondiscrimination provisions, to implement testing requirements, or to report any program information publicly. The legislation also does not identify procedures for determining that educational service providers are “qualified,” and seems to assume that any business or entity asserting qualifications is equipped to educate. There is no cap on how many students can participate, and the vast array of allowable educational expenses range from private school tuition to summer camp and college tuition.

There is an important role for the federal government and Congress to play in advancing educational equity, which includes the need to eliminate discriminatory barriers that continue to deny students a quality public education. This legislation, however, would erect one by damaging public schools serving federally- and military-connected students, while funneling federal resources to educational providers with no obligation to serve students equally. For these reasons, the ACLU strongly opposes including the Education Savings Accounts for Military Families Act of 2018 and any similar proposal in the NDAA for FY 2019.

If you have any questions, please contact Michael Garvey, Policy Analyst, at 202-675-2310 or mgarvey@aclu.org.

Sincerely,



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Michael Garvey
Policy Analyst

Cc: Members of the House Armed Services Committee

⁶ U.S. Government Accountability Office, GAO-18-94, Private School Choice: Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities (2017), *available at* <https://www.gao.gov/assets/690/688444.pdf>.

⁷ For example, a 2010 study of the Washington, DC voucher program found that 21.6% of parents who rejected a voucher that was offered to their child did so because the school lacked the special services that their child needed and, 12.3% of the parents who accepted a voucher for their child but then left the program cited a lack of special needs services at the school they had chosen. U.S. Dep’t of Educ., Evaluation of the D.C. Opportunity Scholarship Program: Final Report, 24-26 (June 2010).