



The Honorable Miguel A. Cardona
Secretary, Department of Education
400 Maryland Avenue, SW
Washington, DC 20202
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August 11, 2023

Re: Notice of Intent to Sue – Department Guidance on Bipartisan Safer Communities Act

Dear Secretary Cardona:

Safari Club International, Sportsmen's Alliance Foundation, and our partners and affiliates ("SCI" and "SAF") respectfully provide this notice of our intent to sue to challenge the U.S. Department of Education's misinterpretation of federal law to prohibit use of federal funding for shooting sports, hunter education, and outdoor education programs in schools.

SCI and SAF have reviewed the Department's guidance for implementing the Bipartisan Safer Communities Act ("BSCA"), communications with schools, and statements to the media. Based on this review, we believe the Department's interpretation of BSCA Section 13401 is arbitrary and capricious and contrary to law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706 ("APA"). Congress clearly did not intend for this provision to prohibit instruction in shooting sports and outdoor education. These programs are integral to improving the mental health of students and reducing the stressors that can contribute to youth violence. A bill aimed at improving mental health resources for students, which explicitly funded "activities to support safe and healthy students," does not, and would not, bar the provision of resources to programs successfully providing exactly these types of activities.

Nor does the Department's interpretation make sense, as it could be expanded to cover a whole host of classes and programs that expose students to instruction in the use of tools and other potentially dangerous sporting and non-sporting equipment. The Department should not assume that, when drafting the BSCA, Congress intended such "an absurd or manifestly unjust result." *E.g., Lockhart v. Napolitano*, 573 F.3d 251, 260 (6th Cir. 2009) (citing *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 509-10 (1989)). Because the Department's "interpretation creates an arbitrary, irrational and inequitable outcome," it violates the APA. *See id.* (citation omitted).

In addition, we believe the Department's issuance of an interpretation of federal law which affects a broad scope of unspecified school programs and which is prospective in nature is a rulemaking, subject to APA notice and comment. 5 U.S.C. § 551(4); *Georgetown Univ. Hosp. v. Bowen*, 821 F.2d 750, 757 (D.C. Cir. 1987), *aff'd*, 488 U.S. 204 (1988). Had the Department provided this opportunity before adopting this interpretation and cutting off the disbursement of

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funding to schools, SCI and SAF, Members of Congress, and others would have been able to weigh in, and correct the Department's misinterpretation of the law. The Department's failure to provide this public notice and comment violates the APA, and has, itself, contributed to the broad national concern and outrage over the Department's actions.

The Department's misinterpretation of the BSCA detrimentally affects millions of students around the country, who depend on these programs to provide a safe, healthy outlet, to learn life-skills, and to have an opportunity to be outside and engage in nature. SCI and SAF are aware that the Department has cancelled funding for certain programs, and that other schools have cancelled shooting sports or hunter education classes out of fear of a loss of federal funding. SCI and SAF are engaged in providing outdoor and hunter education. As one example, the American Wilderness Leadership School ("AWLS") provided by the Safari Club International Foundation was founded in 1976, with the vision of providing educators with a useful hands-on experience that they can bring home to their classrooms. Since then, AWLS has provided an accredited conservation education program for more than 6,000 teachers who reach more than a million students annually. Those teachers—rightfully—fear the impact of the Department's actions on their programs and their students.

As another example, SAF's *Conservation Science* curriculum is currently offered in dozens of schools across a number of states, with new school districts joining each semester as the program expands rapidly across the country. As with SCI's AWLS program, *Conservation Science* in the classroom will be irreparably damaged if the Department's actions are not corrected expeditiously. SCI and SAF respectfully request that the Department assuage existing fears, withdraw its guidance, and publish notice in the Federal Register that no funding will be withdrawn as a result of BSCA Section 13401.

SCI and SAF request a response to this letter within ten days. Please contact our counsel at 202-309-7862, or by email at rlennox@safariclub.org. Otherwise, we intend to file suit to clarify the law and correct the Department's misinterpretation. Not only are these programs too precious to leave in limbo, or to risk cancellation, but schools have or will soon begin a new year. These schools need proper guidance, which emphasizes the important role that these programs play and makes clear that these programs are assets, not liabilities, in the Department's view. We look forward to your prompt response.

Sincerely,

Safari Club International



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