

Amanda J. Schneider
Education Justice Program
Direct: 314-256-8768
Email: ajschneider@lsem.org



Daniel K. Glazier
Executive Director
General Counsel

Genevieve Bonadies Torres, Counsel
David Hinojosa, Director
Educational Opportunities Project
Tele: 202-662-8600
Email: gbonadies@lawyerscommittee.org
Email: dhinojosa@lawyerscommittee.org



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

July 17, 2020

Dr. Margie Vandeven
Commissioner, Missouri State Board of Education
205 Jefferson St.
Jefferson City, MO 65101
commissioner@dese.mo.gov

Charles W. Shields, President
O. Victor Lenz, Jr., Ph.D., Vice President
Kimberly Bailey, Member
Donald Claycomb, Member
Carol Hallquist, Member
Peter F. Herschend, Member
Mary Schrag, Member
Pamela Westbrook-Hodge, Member
Missouri State Board of Education
205 Jefferson St.
Jefferson City, MO 65101
sbe@dese.mo.gov

RE: State and LEA action needed to eliminate unlawful fees and affirmatively equip all students with materials needed to access education guaranteed by state and federal law

Dear Commissioner Vandeven and Members of the State Board of Education:

We, the Legal Services of Eastern Missouri (“LSEM”) and the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”), look forward to meeting with the Department of Elementary and Secondary Education (“Department”) on August 5th to discuss issues around ongoing education to disciplined students. We write now with regard to a different set of concerns arising out of COVID-19 and school closures. Specifically, we have concerns with Local Education Agencies’ (“LEAs”) policies and practices that deny Missouri children access to an education based on their inability to pay for technical devices needed for “distance” learning.

Our organizations’ research and LSEM’s conversations with its clients reveal a systemic, statewide problem whereby many LEAs impose unlawful fees on families to obtain technology,

which is now necessary to access an education in the wake of school closures due to the COVID-19 pandemic. Just as importantly, the harms of such policies are disproportionately felt by students who are already the most marginalized within Missouri's education system, including: students of color, students living in poverty, students experiencing homelessness, and students who are English learners. The deprivation of education suffered by students without access to digital learning tools during the pandemic further exacerbates existing disparities in educational opportunities for students in Missouri. And it adds to Missouri's long and troubled track record of providing inferior educational opportunities to Black students who disproportionately attend racially isolated school districts with a higher share of homeless students and a lower share of financial resources.

Charging families a fee for necessary educational devices violates Missouri's Constitution and the McKinney Vento Act, among other potential violations. As you know, the State Board of Education and the Department have independent oversight responsibilities over LEAs' activities to ensure meaningful instruction and compliance with state and federal education mandates. *See, e.g.,* Mo. Rev. Stat. § 161.092; 42 U.S.C. § 11431. We recognize the Department has posted guidance, held webinars, and convened taskforces to assist districts in navigating the impacts of COVID-19 and the disbursement of CARES Act funds. From our review of state and district materials, however, the problems we raise below regarding the imposition of fees and barriers to remote learning remain unaddressed and require the Department's immediate attention and action.

A. State and national research reflect a sizable proportion of students cannot access remote, online learning, and these challenges are most pronounced among low-income, Black students.

The Department is well-aware from its statewide surveys that a sizable number of Missouri students have not been able to access education during school closures due to inadequate technology (also known as the "digital divide"). As stated in its April 1st Email to Administrators, the Department's own "Technology/Internet Access Survey" showed that "nearly 20% of respondents feel they are not reaching their students at all. The greatest need identified by respondents, as DESE expected, is access to the internet."¹

Various sources indicate that the deprivation of education due to lack of resources has disparately impacted Black, low-income communities. St. Louis Public Radio reported: "[t]he distribution periods [of computers and hotspots] ranged from just a few days in wealthier districts such as Rockwood in far western St. Louis County to nearly six weeks in St. Louis."² National Center for Education Statistics ("NCES") for the 2017-2018 school year reflect how these distribution periods correspond with stark demographic differences between the districts:

[table on following page]

¹ DESE Communications, *Email to School Administrators*, Missouri Department of Elementary & Secondary Education 3 (April 1, 2020), <https://dese.mo.gov/sites/default/files/Email-to-School-Administrators-4-1-20.pdf>

² Ryan Delaney, *Rapid Shift to Remote Learning Shows Gaps in 'Digital Divide'*, St. Louis Public Radio (May 15, 2020), <https://news.stlpublicradio.org/post/rapid-shift-remote-learning-shows-gaps-digital-divide#stream/0>

School District	% White Students	% Black Students	% Free & Reduced Price Lunch	% homeless students	Dist. Period (computers and hotspots)
Rockwood	76.5%	8.7%	14.6%	1.2%	A few days
St. Louis City	13.2%	79.7%	100%	23.3%	~six weeks

The demographic trends in distribution periods are emblematic of deeper disparities by race and income level in access to online education programs. Research indicates Black and Latinx families have less access to technology³ and less disposable income⁴ for fees associated with technology as compared with their White peers. According to 2018 Census figures, Black households in Missouri are 1.6 times more likely to lack internet access and lack a computer at home compared to White households.⁵ These racial disparities are even greater in districts experiencing distribution delays such as St. Louis City. There, 2018 Census data shows Black households are 3.0 times more to lack internet and 2.5 times more likely to lack a computer than White households.⁶ The disproportionate impact of COVID-19 on communities of color compounds the economic and educational challenges faced by such families. Missouri's population is 12% African American, but African Americans currently make up 35% of COVID-19 cases and 36% of the deaths from the pandemic.⁷ COVID-19 has hit Saint Louis County harder

³ For example, a 2018 *Child Trends* Report found stark disparities in home computer access and internet use. Children in households with lower incomes were less likely to have home computer access (57 percent access in households earning under \$15,000 annually, compared with 91 percent of those in households earning \$75,000 or more annually); for internet use, the respective percentages were 38 and 70 percent. The Report also documented wide gaps in computer and internet access by race. Black and Latinx children were less likely to have computer access than their White peers, and less likely to have internet access at home (approximately 50% compared to 65%). *Child Trends*. (2018). "Home computer access and internet use." Retrieved from <https://www.childtrends.org/indicators/home-computer-access>; see also Office of Policy Development and Research. (2016). "Digital Inequality and Low-Income Households." Retrieved from <https://www.huduser.gov/portal/periodicals/em/fall16/highlight2.html>; Pew Research Center. (2019). "Smartphones help blacks, Hispanics bridge some – but not all – digital gaps with whites." Retrieved from <https://www.pewresearch.org/fact-tank/2019/08/20/smartphones-help-blacks-hispanics-bridge-some-but-not-all-digital-gaps-with-whites/>; Pew Research Center. (2019). "Digital divide persists even as lower-income Americans make gains in tech adoption." Retrieved from <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>.

⁴ See, e.g., Laura Shin, *The Racial Wealth Gap: Why A Typical White Household Has 16 Times The Wealth Of A Black One* (2015), *Forbes*, retrieved from <https://www.forbes.com/sites/laurashin/2015/03/26/the-racial-wealth-gap-why-a-typical-white-household-has-16-times-the-wealth-of-a-black-one/#5acd29ed1f45> (the median white household had \$111,146 in wealth holdings in 2011, compared to \$7,113 for the median black household and \$8,348 for the median Latino household; with respect to income, a typical white family earns \$50,400, while the typical black family earns \$32,038, and the typical Latino family, \$36,840); see also Amy Traub, Laura Sullivan, Tatjana Meschede, and Tom Shapiro, *The Asset Value of Whiteness: Understanding the Racial Wealth Gap* (2017), *Demos*, retrieved from <http://www.demos.org/publication/asset-value-whitenessunderstanding-racial-wealth-gap>.

⁵ U.S. Census Bureau, 2018 American Community Survey 5-Year Estimates, Table S2802.

⁶ *Id.*

⁷ *Racial Data Dashboard*, The COVID Tracking Project (Last Updated Jul. 15, 2020), <https://covidtracking.com/race/dashboard>

than any other county in the state.⁸ On top of having the most cases and deaths across the state, residents of Saint Louis County have filed the most unemployment claims as the pandemic cripples the state's economy.⁹

In light of such statistics, it is evident that policies that impose fees for technology or fail to equip students with necessary digital devices disproportionately harm low-income, Black communities, as further discussed below.

B. There are systemic, racialized problems with LEAs imposing fees for essential technology and providing uneven access to ongoing education in the wake of COVID-19.

LSEM and the Lawyers' Committee have learned from clients, community members, and additional research that LEAs across the state are imposing unlawful fees on families for digital learning tools that are now necessary for accessing education. Moreover, our research indicates these practices are racialized: they disproportionately deny an education to Black students who are disproportionately concentrated in property-poor, racially isolated school districts with markedly higher proportions of students experiencing homelessness.

Normandy Schools Collaborative ("Normandy") provides a glaring example of the prevalence and adverse harms of LEAs' imposition of fees. Located in Saint Louis County, Normandy serves a student population wherein 99.8% of students qualify for free or reduced-price lunches and 95.1% of students are African American.¹⁰ As the demographic trends shared in *Section A* reflect, Normandy's families are the least likely to have adequate access to technology and the most likely to experience economic distress, especially in the midst of a public health crisis that has disproportionately ravaged Saint Louis County's Black community. Similar to other Missouri districts, Normandy transitioned its curriculum to online or "distance" learning to mitigate the spread of COVID-19.¹¹ This distance learning approach required students to have access to a computer and an internet connection. But this past spring, Normandy informed families

⁸ Missouri Coronavirus Map and Case Count (Updated May 1, 2020), *New York Times*, retrieved from <https://www.nytimes.com/interactive/2020/us/missouri-coronavirus-cases.html>. Racial disparities similarly characterize trends in Saint Louis County where recent data shows African American residents are affected at nearly twice the rate as White residents. See "More than 50% of COVID-19 patients in St. Louis County are black; all 12 deaths in city were black" (April 9, 2020), *KMOV4*, retrieved from https://www.kmov.com/news/more-than-50-of-covid-19-patients-in-st-louis-county-are-black-all-12/article_0f09fef4-79de-11ea-9a55-77ef9fb983a2.html.

⁹ "Latest Coronavirus News: St. Louis County has the most unemployment claims in Missouri" (April 30, 2020), *KMOV4*, retrieved from https://www.kmov.com/news/latest-missouri-st-louis-coronavirus-news/article_fb3b81ac-8885-11ea-b2bf-cb0239540ff8.html.

¹⁰ Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., Common Core of Data (CCD) Local Education Agency (School District) Universe Survey 2017-18 v.1a, 2018-19 v.1a, Local Education Agency (School District) Universe Survey Geographic Data (EDGE) 2017-18 v.1a, and Public Elementary/Secondary School Universe Survey 2017-18 v.1a, <https://nces.ed.gov/ccd/elsi/tableGenerator.aspx> (last visited June 19, 2020)

¹¹ See Normandy Schools Collaborative Remote Learning Update: Phase Two Rolls Out (April 28 2020), retrieved from <https://www.normandy.org/covid19> (explaining "we now know remote learning will continue through the end of the school year, May 29. . . . We have partnered with Bellwether Education Partners to roll out this next phase in our remote learning program. Teachers will increase engagement with the use of tools like Google Meet and Zoom to have virtual classroom lessons for students to interact with each other and the teacher. These class sessions will be recorded then posted on Google Classroom for future reference.")

that they must pay \$25 for a Chromebook, which had become necessary for students to access the curriculum for a public education. Normandy made no mention of a fee waiver, as attested by LSEM's clients and further evidenced by numerous website pages and social media advisories posted as recently as June 22, 2020. (*See Appendix A*).

This payment requirement directly harmed LSEM's clients and likely deprived countless other families of ongoing education as well. For example, one of LSEM's clients was unable to afford a deposit of \$25 dollars. As a result, the family entered into a predatory "rent to own" agreement for a computer.¹² Another client's family was unable to satisfy the deposit requirement because they were experiencing homelessness as defined under the McKinney-Vento Homelessness Assistance Act.¹³ A \$25 payment in this family's case was unaffordable because they do not have \$25 to spare. These unlawful fees resulted in substantial losses in learning, which will have long-term, adverse consequences for such students and their families. On July 7th, Normandy finally agreed to take steps to eliminate the fees after our organizations sent them multiple letters outlining the illegality and immorality of the practice, and we still await final confirmation that the district has abolished the fees. (*See Appendix B*).

While Normandy is illustrative of the problem, this issue extends across Missouri. Our research reveals a systemic pattern whereby many families—and particularly low-income, Black families—continue to face barriers in accessing education during school closures due, in significant part, to inadequate technology. In May and June, our organizations reviewed the websites of over 20 school districts in the Eastern Missouri region to compare publicly posted policies related to laptops and WiFi services. Our review found a significant variety in LEAs' published practices. At least two additional districts explicitly require payment for accessing a tablet or laptop.¹⁴ Other districts were silent on fees, but they may charge payments in practice. Indeed, Normandy initially tried to defend its unlawful practice by stating "the district practice is no different than most districts providing Chromebooks." (*See Appendix B.4*).

In contrast to Normandy and the aforementioned districts, there are districts that explicitly state the district covers the insurance fee for Chromebooks.¹⁵ For example, Rockwood School District informs families that Rockwood pays for insurance covering accidental damage, and students will only be charged if an investigation shows purposeful destruction or carelessness.¹⁶

¹² The predatory loan required no up-front costs, but the long-term costs to the family will be substantial.

¹³ The McKinney-Vento Act defines "homeless children and youths" as individuals who lack "a fixed, regular, and adequate nighttime residence." 42 U.S.C. § 11434a(2)(B)(i). It includes students who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations or are living in emergency or transitional shelters. 42 USC § 11434a(2).

¹⁴ Kirkwood School District's posted policies require students in grades 3-8 to pay an "iPad Waiver Fee" in the amount of \$20, or \$10 for students receiving free or reduced lunch.¹⁴ Maplewood Richmond Heights requires middle school and high school students to pay fees to obtain a laptop. The sliding scale for high schoolers is: Full: \$30, Reduced: \$15, Free: \$5. The fact that "free" still requires \$5 payment underscores the problem with the process.

¹⁵ See, e.g., *Program Handbook*, Rockwood School District 13 (last visited Jul. 15, 2020), <https://www.rsdmo.org/departments/technology/1to1/Chromebook%20Guidelines/English.pdf>

¹⁶ *Id.*

Still other districts make it clear that all students will automatically be issued a Chromebook; issuance is not contingent on the payment of a fee.¹⁷

District websites also indicate marked differences in the extent to which LEAs proactively seek to equip their students with necessary technology. Some districts had transparent processes for requesting digital devices. For example, the City of St. Louis posted a survey on their website for requesting a laptop.¹⁸ Other districts did not have clearly posted protocols. Based on our review, Jennings School District’s website did not have any information on how to access essential technology.¹⁹ This was true despite Jennings’ April 6th update stating it would “continue to provide academic supports using the JSD Virtual Academy-Distance Learning through May 22nd.”²⁰ While families in Jennings may face barriers due to a lack of information about accessing technology, families in Riverview Gardens may face barriers due to Riverview’s stated policy that “Students should use devices they own to complete the work (laptops, tablets, cell phones).”²¹ While Riverview Gardens stated its “remote learning plan...focuses on online activities,” the district provided no clear process for requesting technology should families lack the necessary devices.

Troublingly, many of the aforementioned districts with problematic technology policies predominantly serve the student populations most in need of technological access and most at risk of falling behind. Meanwhile, Rockwood, which covers student insurance, serves students who are wealthier and Whiter. The table below captures these demographic patterns based on 2017-2018 U.S. Education Department statistics:²²

[table on following page]

¹⁷ *Brentwood Middle School Student Handbook*, Brentwood Middle School 12 (last visited Jul. 15, 2020), http://bms.brentwoodmoschools.org/UserFiles/Servers/Server_820312/File/2019_2020StudentHandbook.pdf

¹⁸ *St. Louis Public Schools Virtual Learning Plan and Guidance Documents for Students and Families*, St. Louis Public Schools (last visited Jul. 15, 2020), http://d31hzhk6di2h5.cloudfront.net/20200403/40/fd/b5/66/73ef708f09c7ee6033dd4f63/SLPS_Virtual_Learning_Communications_for_Parents.pdf

¹⁹ *See generally Home Page*, Jennings School District (last visited Jul. 15, 2020), <https://www.jenningsk12.org/>

²⁰ Art McCoy, *Updated Letter from Dr. McCoy Concerning COVID-19 School Closure*, Jennings School District (April 6, 2020), <https://www.jenningsk12.org/sys/content/newspost/600146772e134c8796dbab90cd5b34fa>

²¹ *High School Information*, Riverview Gardens School District (last visited July 15, 2020), <https://www.rgsd.k12.mo.us/highschoolinformation>

²² Nat'l Ctr. for Educ. Statistics, U.S. Dep't of Educ., Common Core of Data (CCD) Local Education Agency (School District) Universe Survey 2017-18 v.1a, 2018-19 v.1a, Local Education Agency (School District) Universe Survey Geographic Data (EDGE) 2017-18 v.1a, and Public Elementary/Secondary School Universe Survey 2017-18 v.1a, <https://nces.ed.gov/ccd/elsi/tableGenerator.aspx> (last visited June 19, 2020); U.S. Dep't of Educ., EDFacts Data Files: SY 2017-18 Homeless Students Enrolled (C118), <https://www2.ed.gov/about/inits/ed/edfacts/data-files/lea-homeless-enrolled-sy2017-18.csv> (last visited June 19, 2020).

School District	% students, free & reduced price lunch	% Black students	% White students	% students who are homeless
Normandy: charging \$25 for Chromebooks	99.8%	95.1%	1.3%	20.1%
Jennings: no information on website for how to request technological devices	100%	98.5%	0.5%	8.6%
Riverview Gardens: requiring students to rely on their own devices for online learning	100%	98.1%	1.0%	5.6%
<i>Compare, Rockwood</i> Covering payment of insurance for all accidental damage	14.6%	8.7%	76.5%	1.2%
Statewide average	58.9%	11.0%	83.8%	4.7%

Disparate access to remote learning compounds longstanding inequities in Missouri’s education system by race and income. As Missouri’s 2019 Consolidated State Plan showed, schools with the highest minority populations had the *lowest* proficiency rates on Math and English Language Arts performance standards (30.9% and 42.1% respectively).²³ They also had the highest proportion of teachers who were “less than fully qualified,” higher proportions of teachers “teaching-out-of-field,” and lower teacher retention rates and salaries than other schools across Missouri.²⁴ The 2017 State Plan also reflects the hyper-segregation of schools by race *and* income: 90.8% of students attending high-minority schools also qualify for free-and-reduced price lunch.²⁵

Policies that present barriers to accessing remote learning during school closures—and the failure to proactively identify and remove them—disproportionately harm students who are already the most underserved and under-resourced in Missouri’s education system.

C. State and federal law clearly prohibit the imposition of fees and require LEAs to affirmatively remove barriers to accessing education including during the pandemic.

Charging for technology—or any essential school materials—violates Missouri’s Constitution, which guarantees “free public schools for the gratuitous instruction of all persons in

²³ *Revised State Template for the Consolidated Plan*, Missouri Department of Elementary & Secondary Education 110, (March 4, 2019), <https://dese.mo.gov/sites/default/files/qs-ESSA-Plan-2019.pdf>

²⁴ *Id.* at 38

²⁵ *Revised State Template for the Consolidated Plan*, Missouri Department of Elementary & Secondary Education 91, (June 2017), <https://dese.mo.gov/sites/default/files/ESSAPlanDraft.pdf>

this state” Mo. Const. art. IX, §1(a).²⁶ The Missouri Supreme Court has held the state constitution prohibits a school district from charging registration fees or fees in courses for which academic credit is given even if that fee or charge is de-minimis. *Concerned Parents v. Caruthersville Sch. Dist. 18*, 548 S.W.2d 554, 562 (Mo. 1977). The Attorney General’s Office has also determined that a school district may not require a student to provide integral materials required for the successful completion of a course, without violating the state constitutional mandate. Op. Att’y Gen. 266-73 (1973).²⁷ “The general rule is that a requirement for free schools will invalidate any fee, whether denominated tuition, matriculation fee, registration fee, library fee, incidental fee, or anything else.” Op. Att’y Gen. 269-72 (1972) (citing *State ex rel. Roberts v. Wilson*, 297 S.W. 419 (Spr. Ct. App. 1927); cases collected at *Anno.*, *Validity of Public School Fees*, 41. A.L.R. 3d 752).²⁸

The required charges also violate the McKinney-Vento Act, which guarantees that children experiencing homelessness must have equal access to a “free, appropriate public education.” 42 U.S.C. §11431(1). As you may know, state and local agencies are legally obligated to remove barriers to ensure children in unstable housing can “participate fully in school activities”²⁹ and “meet the same challenging state academic standards”³⁰ as their peers. In addition, the state and LEAs must “adopt policies and practices to ensure that homeless children and youths are not stigmatized or segregated on the basis of their status as homeless.” 42 USC § 11432(g)(1)(J). As part of these duties, the state and LEAs must revise or adopt policies to ensure children and youth experiencing homelessness do not “face barriers to accessing academic and extracurricular activities, including online learning if such programs are available at the state and local levels.” 42 USC § 11432(g)(1)(F)(iii).

Many districts’ recent transitions to “distance” learning programs clearly require a computer and internet to fully access coursework and teacher support. For example, Normandy’s April update to families states that under its remote learning program: “[t]eachers will increase engagement with the use of tools like Google Meet and Zoom to have virtual classroom lessons for students to interact with each other and the teacher. These class sessions will be recorded then posted on Google Classroom for future reference.”³¹ Normandy’s Summer School program

²⁶ Mo. Const. art. IX, s 1(a), provides in pertinent part as follows: “A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law. . . .”

²⁷ The Opinion consistently states that “the legality of this practice [of requiring a student to furnish their own materials or rent them at a fee] turns on-whether participation . . . is given academic credit.” If academic credit is given, the school may not require the student to furnish such materials, rent them at a fee, or charge costs. Op. Att’y Gen. 266-73 (1973), p. 10.

²⁸ This prohibition does not change for situations where districts must pay for resources to facilitate learning. The Attorney General’s Office has explained Missouri’s constitution prohibits charging students for materials used for instruction, irrespective of the “actual costs” associated with such materials. Op. Att’y Gen. 269-72 (1972), p. 4. Any fee for “insurance” falls squarely within this prohibition since “[t]here is no authority in the Constitution or statutes for allowing any of these costs to excuse the school district from its duty of providing ‘gratuitous instruction’ to all students who are properly enrolled in its schools.” *Id*

²⁹ 42 U.S.C. §11433(d)(16).

³⁰ 42 U.S.C. §11431(4).

³¹ During the spring semester, the alternative option for students without laptops or WiFi consisted of “printed assignments that school principals can provide by request.” This option is clearly substandard and markedly inferior

similarly uses “an online model with Google Classroom as a primary space for Remote Learning.”³²

LEAs similar to Normandy, which offer comprehensive curricular services through their online programs, may not charge fees for integral materials such as laptops or WiFi hotspots. Any such charges clearly violate the state constitution and the McKinney-Vento Act. Moreover, these state and federal laws place an affirmative obligation on the state and LEAs to remove barriers that deprive students of an education. In a remote learning environment that relies on online educational services, this duty encompasses taking affirmative steps to equip every family with the necessary technological devices.³³

E. The Department should take action to address the unlawful imposition of fees and inequitable access to education.

We have reviewed the guidance, memos, and trainings posted on the Department’s website regarding COVID-19 and CARES Act funding.³⁴ We are thankful for the Department’s efforts to date assist school districts during this pandemic. The Department’s decision to issue its “Technology/Internet Access Survey” to LEAs is aligned with its duties to ensure LEAs fulfill the educational mandate guaranteed by Missouri’s education. However, the Department’s response to this survey raises some concerns, as captured by the “Email to School Administrators, April 1, 2020.”³⁵ The Department’s identification of resources for LEAs to remove technological barriers for students is helpful. But the Department should also emphasize that LEAs have an affirmative obligation to take steps to ensure students can access comprehensive education services offered by the LEA and guaranteed by Missouri law. Thus, schools must not merely be “encourage[d]”³⁶ to provide digital devices and access to students if instruction occurs through an online platform. Rather, they should be *obligated* to provide such access at no cost and/or ensure comparable, equally comprehensive educational services are provided through another means.

For the reasons outlined above, we advise the Department to immediately take the following steps, among others, to fulfill its supervisory duties:

- (i) **Notify LEAs with written policies charging families for digital devices that these monetary charges are unlawful and must be eliminated immediately.** LEAs must

to an online learning program which offers ongoing instruction, teacher and peer interaction, real-time feedback, and access to grade-level curriculum and texts through the “CleverPortal.”

³² *Academics & Student Support Services*, Normandy Schools Collaborative (2020), <https://www.normandysc.org/Page/67>

³³ Though not the focus of this letter, the state and LEAs must also ensure that remote learning programs protect students’ privacy and Fourth Amendment rights while using school technology. *See generally New Jersey v. T. L. O.*, 469 U.S. 325, 343 (1985) (students have a legitimate expectation of privacy while attending school).

³⁴ *Coronavirus (COVID-19) Information*, Missouri Department of Elementary & Secondary Education (last visited Jul. 15, 2020) <https://dese.mo.gov/communications/coronavirus-covid-19-information>; *Coronavirus Aid, Relief, and Economic Security (CARES) Act*, Missouri Department of Elementary & Secondary Education (last visited Jul. 15, 2020, <https://dese.mo.gov/financial-admin-services/coronavirus-aid-relief-and-economic-security-cares-act>

³⁵ DESE Communications, *Email to School Administrators*, Missouri Department of Elementary & Secondary Education 1 (April 1, 2020), <https://dese.mo.gov/sites/default/files/Email-to-School-Administrators-4-1-20.pdf>

³⁶ *Id.* at p. 3.

immediately revise policies and practices to eliminate monetary charges for equipment necessary for learning. LEAs should also be required to identify students lacking technology access and provide compensatory education to all students who lost out on learning due to inadequate technology to access the LEA's remote learning program or other circumstances beyond their control.

- (ii) **Issue guidance and trainings that ensure LEAs are aware that Missouri's constitution prohibits charging fees for materials that are essential for coursework, including laptops or hotspots for remote learning programs.** This guidance and training should also be posted on Missouri's website.
- (iii) **Develop guidance and trainings to ensure LEAs are fulfilling their duties under the McKinney-Vento Act and the state constitution by taking affirmative steps to remove barriers to education throughout the pandemic.** Clarify the removal of such barriers includes affirmative efforts to provide essential equipment such as laptops and WiFi hotspots for any remote learning programs.
- (iv) **Require from all LEAs plans that describe their learning programs for the upcoming school year.** Among other inquiries, require LEAs to describe in detail how they are: (i) identifying students who lack necessary materials and equipment to access the learning program; (ii) providing such students with necessary materials at no charge, including steps taken to equip students with any necessary digital devices; and (iii) providing compensatory education to students who missed out on learning due to school closures and remote learning programs. Evaluate and provide feedback on such plans to ensure LEAs take affirmative steps to ensure all students access meaningful educational services through the LEAs' learning program. The standards set for these learning programs should also be comprehensive, similar to the Department's "Clear Expectations for Summer Learning."³⁷
- (v) **Advise us of its plans and process for spending discretionary funds, including any plans to prioritize the highest-need students who lack access to basic educational services as guaranteed by state and federal law.** To our knowledge, the State has not yet apportioned all discretionary funds provided under the CARES Act. We would appreciate the Department's responses to the following two inquiries:
 - Will this funding be targeted towards the students with the highest-needs who failed to receive a basic education both during the pandemic, and pre-dating it—namely students attending schools with the highest concentrations of minority students, students living in poverty, and homeless students? The Department's May 2020 Report on the CARES Act alludes to funding LEAs determined to be the "most impacted";³⁸ however, we are not aware of any process or criteria for

³⁷ Chris Neale, *Administrative Memo*, Missouri Department of Elementary & Secondary Education 2 (April 23, 2020) <https://dese.mo.gov/sites/default/files/am/documents/QS-20-005.pdf>

³⁸ Chris Neale, *Coronavirus Aid, Relief and Economic Security Act*, Missouri Department of Elementary and Secondary Education 5 (May 12, 2020), <https://dese.mo.gov/sites/default/files/ReportOnEducationFundsCARESAct.pdf>

determining this. DESE has not yet announced a process for determining the allocation of this funding.

- Will the Department establish clear criteria and a transparent process for allocating such funds? For example, Arizona’s Department of Education articulated the following criteria for such discretionary funds: considerations of tribal communities, the LEA’s existing ability to support online learning, COVID-19 data, and additional indicators like food security, unemployment, and LEA demographics.³⁹

We respectfully request you advise us no later than July 31st of the Department’s anticipated plans to address the five actions listed above, and any prior actions which bear on fulfilling these duties. In addition to written follow up, we would be happy to further discuss these issues when we meet on August 5th. We are encouraged that the State Board of Education issued a statement on June 9th re-affirming:

“Education must fulfill its promise of being the great equalizer...Leaders together must further their efforts to identify and remove policies and practices that have fostered oppression of people of color and historically underrepresented, underserved and marginalized groups for generations.”⁴⁰

We look forward to actions by the Department to fulfill the Board’s stated commitment and ensure “wide-spread educational equity [across Missouri] and the preparing of a workforce-ready constituency.”⁴¹

Sincerely,

/s/ Amanda J. Schneider

Amanda J. Schneider
Legal Services of
Eastern Missouri
ajschneider@lsem.org

Genevieve Bonadies Torres

Genevieve Bonadies Torres, Counsel
Lawyers Committee for Civil
Rights Under Law
gbonadies@lawyerscommittee.org



David Hinojosa,
Director Educational Opportunities Project
Lawyers Committee for Civil Rights Under Law
dhinojosa@lawyerscommittee.org

Enclosures: *Appendix A*: Normandy websites and social media posts stating \$25 fee for accessing a Chromebook (as of June 22, 2020)

Appendix B: Communications with Normandy Schools Collaborative, May-July 2020

CC: Margaret Landwehr, Chief Counsel

³⁹ *Cares Act*, Arizona Department of Education (last visited July 15, 2020), <https://www.azed.gov/cares/geer>

⁴⁰ Charles W. Shields, *State Board of Education Response*, Missouri Department of Elementary & Secondary Education (June 9, 2020) <https://dese.mo.gov/sites/default/files/Statement-June-9-2020.pdf>

⁴¹ *Id.*