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United States Government Accountability Office
Washington, DC 20548

B-307917

July 6, 2006

The Honorable Kent Talbert
General Counsel
Department of Education

Subject: *Department of Education—No Child Left Behind Newspaper Article Entitled
“Parents Want Science Classes That Make the Grade”*

Dear Mr. Talbert:

Thank you for your letter dated May 25, 2006, transmitting the Department’s Antideficiency Act report for No Child Left Behind Act promotional activities, including a prepackaged news story and the Armstrong Williams subcontract. We will include your report in our Antideficiency Act database.

We understand that the Department disagrees with GAO’s conclusions that the prepackaged news story and Armstrong Williams subcontract resulted in Antideficiency Act violations. We do not find persuasive the reason you offer in your report to justify these two actions and, in fact, already addressed them in our September 30, 2005, opinions. *See* B-305368, Sept. 30, 2005; B-304228, Sept. 30, 2005. We stand by our conclusions in those two opinions.

Also, we want to advise you of our concern with your Office’s conclusion that the Department’s use of appropriated funds for the newspaper article, entitled “Parents Want Science Classes that Make the Grade,” was proper. We disagree with your view that section 6076 of Public Law 109-13 created new law not in effect at the time that the Department contracted for the newspaper article. *See* Pub. L. No. 109-13, § 6076, 110 Stat. 231, 301 (May 11, 2005). Congress clearly rejected the view that section 6076 imposed a new requirement. In a conference report adopted by both Houses, the conferees specifically stated that section 6076 “*confirms* the opinion of the Government Accountability Office dated February 17, 2005 (B-304272).” H.R. Conf. Rep. No. 109-72, at 158–59 (2005) (emphasis added). The opinion to which this language refers explains that the critical element in determining whether the promotional materials constitute covert propaganda is whether the intended audience is informed of the source of the materials. *See* B-304272, Feb. 17, 2005. We disagree with the Department’s interpretation that section 6076 created a new restriction not already imposed by the publicity or propaganda prohibition. Indeed, it

was because the Justice Department's Office of Legal Counsel¹ and the Office of Management and Budget² refused to recognize the requirement for source attribution that Congress enacted section 6076 to emphasize that the publicity or propaganda prohibition always restricted the use of appropriations to disseminate information without proper source attribution.

Again, we thank you for your response. If you have any questions regarding this matter or wish to discuss the applicability of section 6076 further, please feel free to contact Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, at (202) 512- 8257.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gary L. Keplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Keplinger
General Counsel

cc: Senator Frank Lautenberg
Senator Edward Kennedy
The Honorable John P. Higgins, Jr.
Inspector General, Department of Education

¹ Memorandum for the General Counsels of the Executive Branch, *Whether Appropriations May be Used for Informational Video News Releases*, OLC Opinion, Mar. 11, 2005.

² OMB Memorandum No. M-05-10, *Use of Government Funds for Video News Release* (Mar. 11, 2005).