



March 31, 2010

The Honorable Tom Harkin
Senate HELP Committee
428 Senate Dirksen Office Building
Washington DC, 20510

The Honorable Michael B. Enzi
Senate HELP Committee
428 Senate Dirksen Office Building
Washington, DC 20510

Dear Chairman Harkin,

On behalf of the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee), we thank the Senate Committee on Health, Education, Labor and Pensions (Committee) for your work on the Elementary and Secondary Education Act Reauthorization Bill. We provide the following comments on the reauthorization in the spirit of a dedicated commitment to working with the Committee on the best possible bill.

The Lawyers' Committee was established in 1963, as a nonpartisan, nonprofit organization at the request of President John F. Kennedy. Our mission is to involve the private bar in providing legal services to address racial discrimination and to secure, through the rule of law, equal justice under law. For almost 47 years, the Lawyers' Committee has advanced racial and gender equality through a highly effective and comprehensive program involving educational opportunities, fair employment and business opportunities, community development, open housing, environmental health and justice, criminal justice, and meaningful participation in the electoral process. As a result, we have gathered, throughout the years, meaningful expertise on the challenges confronting our nation as it continues to tackle issues of race and equality of opportunity for all.

America's public education system is the building block of our society. Our nation's children have been promised a free and quality public education, but as is all too well known, this promise has not been fulfilled for many of our youth for decades. The Lawyers' Committee believes that the right to a free and quality education is a civil right, and as such, implores upon this Committee to address the ESEA Reauthorization process through this lens. This requires that the Committee adopt measures that not simply encourage, but require certain standards in all of our public schools, including charters, and provide the proper resources, incentives and guidance for schools to comply.

Attached is the Lawyers' Committee's education agenda which will provide an overview of all of the educational issues we are prioritizing this year, including those related to ESEA. Within ESEA, we are focused primarily upon the following:

- Promoting diversity and integration requirements and the reduction of poverty concentration in public school programs, including Title I, magnet and charter schools,
- Promoting the use of inter-district public school choice options in order to provide equitable and quality educational opportunities,
- Increasing and mandating parental involvement programs,
- Ensuring civil rights protections in all programs and increased enforcement mechanisms,
- Promoting equity particularly in predominately minority schools through the proper distribution of high quality teachers and resources.

The racial disparities between minority and white students are extremely troubling. The National Center for Education Statistics reported that in 2007 the dropout rates for black students was 8.4% and for Hispanic students was 21.4% compared to the dropout rate of 5.3% for white students¹. This is not the only disparity in the completion of schooling. In the state of Connecticut, which has one of the highest graduation rates in the country, only 58 percent of Hispanic students and 66 percent of black students finished high school on time². This is a problem reciprocated and even more severe on a national level.

While the following more detailed recommendations are targeted to the needs of minority children, the Lawyers' Committee provides them to the Senate and Health, Education, Labor and Pensions Committee with the ultimate goal of helping all children. We are interested not in simply shrinking, but eliminating the gap between minority and white students and ensuring that all children receive a quality education.

Diversity in Schools

A critically important step to be taken to narrow the achievement gap is the creation of diversity standards and integration requirements in public school programs, including Title I and charter schools. As President Obama has observed, "segregated schools were and are inferior schools...50 years after *Brown v. Board of Education*. And the inferior education they provided, then and now, helps explain the pervasive achievement gap between today's black and white students." Even the Supreme Court recently acknowledged that promoting diversity and avoiding racial isolation are compelling interests that schools can and should pursue. Thus, we urge the following:

- The reauthorization process must include efforts to address the impact of concentrated poverty and racial isolation in schools as part of a district's obligations under ESEA. Racial and economic diversity can be promoted in the ESEA by creating strong financial incentives to reward states and/or school districts that enact policies or practices that promote school diversity and decrease the concentration of poverty in particular schools or school districts from one year to the next.

¹ National Center for Education Statistics, "Status and Trends in the Education of Racial and Ethnic Minorities". September 2007

² Connecticut Data and Research Center, "Student Graduation Data 2008". Also reported in the *CT Mirror*
<http://www.ctmirror.org/story/5272/graduation-rates-324>

- School integration can also be supported by retaining and strengthening ESEA’s right-to-transfer provisions to include cross-district transfers and providing transportation, resources and services to families who exercise their right to transfer schools.
- Any new programs and/or schools should include diversity standards and should not re-concentrate poverty levels to the detriment of student achievement.

Parental Involvement

Parental involvement in the education of a child has proven benefits for the student, the teacher, and the parent. Informed and engaged parents are the best judges of their children’s educational needs. Thus, effective parental involvement strategies must be part of a comprehensive education plan and not simply voluntary or encouraged. Furthermore, parents should be fully informed, not only of their rights as parents to ensure that their child is receiving a quality education, but their own responsibilities for creating an enriched learning environment outside the classroom. We recommend the following:

- ESEA should increase dedicated funding and the emphasis in state and local education plans to provide more effective parental involvement strategies in all schools, particularly Title I schools. This includes, but is not limited to professional development for both parents and teachers regarding student assessment, parental obligations, parental literacy programs, notice of student rights for inter-district transfers, supplemental services, etc., and school processes.

Civil Rights Protections

Title VI, 42 U.S.C. § 2000d et seq., prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. This law enables parents or aggrieved individuals to file an administrative complaint with the federal agency providing funds to a recipient or a lawsuit in federal court. However, if parents, especially in a low-income community, believes their child’s rights have been violated, most are unfamiliar that such a process exists. When problems arise, parents can be the best advocates for their children, but must be properly informed to do so. Therefore, we recommend the following:

- All schools should be required to establish a clearly defined administrative process for notifying parents about their schools’ compliance under ESEA and under Title VI; and designate a point of contact for parents to report any complaints. This process should include providing parents with information about the monitoring and enforcement responsibilities of the USDOE Office of Civil Rights regarding racially segregated classrooms/schools, access to special programs such as gifted and talented programs, unnecessary clustering of English language learner students and the disproportionate application of disciplinary actions against students of color.

Resource Allocation

Generally, another critically important civil rights issue is the allocation of school funding. The Administration has proposed in its ESEA Blueprint the use of competitive grants to promote innovation and flexibility while lowering the base funding for Title I schools in its FY 2011 Budget. The Lawyers' Committee is extremely concerned that this overly emphasizes a market-based strategy while leaving behind those students in school systems unable to compete for these additional funds. This means that more money will go to schools with better grant writers, and more resources to be able to apply and create successful school innovation plans. Providing children with a free and quality education should not be left to the whims of the market or the ability of a school district to afford a grant writer. Schools with high proportions of minority and disadvantaged students are already behind in resources and will continue to be at a disadvantage in such a system. For example, schools whose students are 50 percent or more minorities are nearly twice as likely to be overcrowded as schools whose students are less than 20 percent minorities³. Additionally, in classes with more than 75 percent minority students, 31 percent of teachers have 25 or more students, but in classes with less than 10 percent minority students, only 22 percent of teachers have 25 or more students⁴. Consequently, the Lawyers' Committee is hesitant to support the creation of another system that focuses on a competitive grants process and further exacerbates the resource discrepancy in minority and majority white communities. While encouraging innovation is key, we urge the Committee to not do so to the detriment of improving all of the nation's public schools by shifting its focus from formula funding to the competitive grants process.

Conclusion

The right to a quality education is paramount and the Lawyers' Committee is committed to protecting this right for all students. The ESEA Reauthorization bill presents a unique opportunity to once again address the disparities that continue to plague our public education system and enact reforms targeted to close the achievement gap. This opportunity must not be ignored or taken lightly. We urge the Committee to enact reforms that target the persistent and discriminatory achievement gap amongst minority and white students. This necessitates clearly defined standards and guidelines, and not simply encouragement from the federal government. If we all truly believe that the education of our children is a civil right, then we must treat it as such and take affirmative steps to address the racial inequities in our public education system. This is the only way to ensure that we are indeed protecting the rights of all of our nation's children.

Thank you again for this opportunity to provide comments. Should the Committee have additional questions, please feel free to contact Tanya Clay House at (202) 662-8330.

Sincerely,

Barbara Arnwine
Executive Director

Tanya Clay House
Director of Public Policy

³ Children's Defense Fund, "Educational Resource Disparities for Minority & Low-Income Children: Quick Facts". January 2004

⁴ National Center for Education Statistics, "Status and Trends in the Education of Racial and Ethnic Minorities". September 2007