



A nonprofit, nonpartisan legal organization formed at the request of President Kennedy in 1963



June 11, 2013

The Honorable Tom Harkin, Chairman
Senate Committee on Health, Education, Labor, and Pensions
731 Hart Senate Office Building
Washington, D.C. 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 (HELP Committee) for the opportunity to submit comments for the record on the Strengthening America's Schools Act. The Lawyers' Committee, a nonprofit, nonpartisan organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. For the past fifty years, the Lawyers' Committee has worked to secure equal justice for all through the rule of law. We firmly believe that every child deserves great teachers, welcoming and inclusive schools, and opportunities to succeed. Equal access to quality education must be available to *all* students, including students of color, those from low-income homes, English-language learners, and students with disabilities.

Yet too many children in this country do not have access to the educational opportunities they deserve. Current policies have failed to close the achievement gap and provide essential support for marginalized students. The proposed bill is a much-needed step toward improving educational outcomes for all students. We write to express strong support for the bill's focus on facilitating parental engagement, promoting positive behavioral supports, and discouraging harsh and exclusionary disciplinary policies. We are also pleased that the proposed reauthorization of the Elementary and Secondary Education Act (ESEA) includes measures to improve accountability, but we urge you to create an even stronger system that will make schools accountable for the success of all students. In addition, the Lawyers' Committee encourages the HELP Committee to seriously consider the following priorities and recommendations.

Racial Diversity

Almost sixty years since the landmark decision in *Brown v. Board of Education* (1954), public schools in our country remain separate but unequal. *Brown's* promise remains unfulfilled as public schools are more segregated today than they have been at any time over the past four decades. The majority of students of color remain concentrated across America in schools that are high poverty, racially isolated, and underperforming. The reauthorization of the ESEA should require that states and school districts take concrete steps to promote inclusive educational environments, decrease poverty concentration, and reduce the harms of racial isolation.

We are pleased that the Magnet Schools Assistance Program (MSAP) will continue to strive to eliminate, reduce, and prevent minority group isolation and will continue to assist schools' efforts to voluntarily desegregate. We applaud the MSAP for including desegregation and increased interactions among students with diverse racial and socio-economic backgrounds as explicit goals. We are also pleased that the proposed bill retains a student's automatic right to transfer from persistently failing schools, which was absent in the 2011 version of this bill. States must be required to guarantee that every student assigned to a consistently underperforming school has the right to enroll in a high-performing school.

We are concerned, however, that the proposed bill does not include financial consequences for schools and districts with policies that foster racially isolated schools. We are also concerned that the proposed bill does not adopt mechanisms for students and parents to challenge school policies that have a disparate impact on students of color.

Student Discipline

Over the past two decades, many schools have increased their reliance on law enforcement officers and exclusionary policies, such as suspensions and expulsions, as means of reducing school disruption. These policies often push students out of schools and into the juvenile justice system. Consistent with the Lawyers' Committee's work to address this school-to-prison pipeline, the proposed reauthorization of the ESEA includes several measures designed to discourage school policies that result in out-of-school suspensions, expulsions, and student involvement in the juvenile justice system.

Notably, the bill prohibits the use of funds for security-related salaries and expenses, drug testing programs, and zero-tolerance disciplinary policies. The bill also requires states to include assurances that the policies used to prevent harassment in schools will emphasize alternatives to school suspension, and it requires states to collect school-level data on suspensions, expulsions, referrals to law enforcement, school-based arrests, and disciplinary transfers. We are pleased that the proposed bill addresses the school-to-prison pipeline by introducing these substantial changes in funding, state assurance requirements, and data collection.

However, despite the bill's apparent focus on school push-out, it largely ignores students in correctional facilities and those reentering public schools from the juvenile justice system. Thus, we urge the HELP Committee to amend the bill to better address the reintegration and educational success of students with juvenile or serious disciplinary histories. First, we encourage you to hold states accountable for educating these students by requiring states to collect data on the academic achievement of students in correctional facilities and students reentering public schools. Second, states should be required to develop correctional and reentry education improvement plans. Third, to build continuity in education for at-risk youth, the bill should require each state to ensure the prompt transfer of all education records to juvenile facilities and back to the community schools. Finally, to discourage the often pervasive segregation of at-risk students, we urge you to require state assurances that schools will not penalize students or place them in alternative education programs based solely on their juvenile histories.

Highly Qualified and Effective Teachers

Research confirms that highly effective and well qualified teachers significantly influence student achievement, yet we lack a national definition for highly qualified teachers. This deficiency allows

each state to define highly qualified teachers, opening our classrooms to teachers who do not meet any meaningful qualifications. The proposed reauthorization of the ESEA not only defines highly qualified teachers but also distinguishes effective teachers from those who are merely qualified.

However, despite this detailed definition of highly qualified teachers, the bill still permits those who have recently enrolled in alternative certification programs to be deemed highly qualified. The bill also eliminates requirements regarding professional development and intensive supervision for these teachers. Under this proposed reauthorization, it is possible to teach for a total of three years without supervision and still be deemed highly qualified. Thus, we support redefining highly qualified teacher as a teacher who has fully completed a state-approved traditional or alternative teacher-preparation program or has passed a rigorous state-approved teacher performance assessment and has obtained full state certification, including subject matter competence in the fields taught.

Though the qualifications for teachers have not been sufficiently strengthened under this proposal, we applaud the bill's provisions regarding the equitable distribution of teachers. If enacted, the bill would require states to ensure that low-income and minority students are not disproportionately taught by teachers with the lowest professional growth ratings. Yet we are concerned that the reporting of such distribution is only required by states and local agencies during the first year of implementation, and we urge the HELP Committee to require ongoing reporting on the equitable distribution of teachers.

Parental Engagement

The Lawyers' Committee recognizes that parent engagement plays a critical role in ensuring that children have the opportunity to succeed in education. We are committed to increasing parental engagement as a means to improve academic outcomes for economically disadvantaged students of color. As such, the Lawyers' Committee is pleased to see the renewed commitment to parent and family engagement in this bill, the increased input from parents and families of students to local educational agencies, the addition of parent engagement goals and benchmarks, the increase of the local educational agency reservation to 2%, and the enhancement of school report cards and parent "right to know" provisions. We are particularly pleased that this bill reauthorizes the funding of the Parent and Family Information and Resource Centers and increases emphasis on low-income children and parents at high-need schools.

English-Language Learners

With one in ten students an English Language Learner (ELL), the educational outlook of our nation is directly linked to raising the achievement of all ELL students in both language acquisition and content knowledge. The Lawyers' Committee is pleased with the bill's increased commitment to equity for ELLs by the addition of individual performance targets comparable to the individualized education programs for students with disabilities. The requirements of more detailed accountability processes, such as more frequent review of data and outcome-oriented responses to lack of progress, are a step in the right direction in ensuring that states and districts are effectively providing ELL students with sufficient services. However, the bill could be strengthened by approaching maintenance of effort to have the same protective effect regardless of whether states are on one- or multiple-year cycles by extending maintenance of effort requirements to multiple years for states outside of the one-year funding cycle. Further, the quality of the ELL data collected and reported by state education agencies and local education agencies can be improved by creating a pilot program to incentivize and study state education agencies' use of disaggregated ELL data into five sub-subgroups: (1) recent-arrival

ELs; (2) ELs with significant interrupted formal education; (3) late-arrival ELs; (4) long-term ELs; and (5) former ELs.

Conclusion

The Lawyers’ Committee for Civil Rights Under Law believes that our education system must prepare young people for success. Although our nation has come a long way since the days of separate but equal, there remains much work to be done. We must continue to strive for the highest standards of educational excellence and ensure that all children receive quality instruction and support. By discouraging harsh disciplinary policies that push students out of schools and encouraging parental engagement in improving schools, the Strengthening America’s Schools Act seeks to create the kind of system where all students can succeed. The bill also takes steps toward ameliorating minority group isolation and demanding an even distribution of quality teachers. At the same time, more can be done to make integration and diversity part of the inherent fabric of our schools. We urge you to consider the above concerns, which are crucial for the advancement of education in our country. We must demand a system where all students have access to great public education—one where *all* children are able to thrive and contribute to the progress of our nation.

Sincerely,

/s/ Barbara R. Arnwine

Barbara Arnwine
President & Executive Director

/s/ Brenda L. Shum

Brenda L. Shum
Director of Education