



May 7, 2010

Via email eseacomment@help.senate.gov

Chairman Tom Harkin
Committee on Health, Education,
Labor and Pensions
615 Dirksen Senate Office Building
Washington, DC 20515

Ranking Member Michael Enzi
Committee on Health, Education,
Labor and Pensions
428 Dirksen Senate Office Building
Washington, DC 20515

Dear Chairman Harkin and Ranking Member Enzi,

On behalf of the National Women's Law Center, an organization that for 38 years has worked to expand the possibilities for women and girls in the areas of education and employment, family economic security, and health, we write to offer the HELP Committee our input regarding the upcoming reauthorization of the Elementary and Secondary Education Act ("ESEA"). We appreciate the important work done on this legislation to date and look forward to working with the Committee as the process continues.

The Center is a leader in the struggle to ensure that women and girls have equal educational opportunities and has worked since Congress enacted Title IX of the Education Amendments of 1972 to advance and protect the rights of students to a quality education in educational institutions across the country. All children should have equal access to high quality education programs and that federal education policy must ensure that students benefit equally from rigorous academic standards. Neither poverty, gender, race, disability, status as an English language learner, migrant status, nor pregnancy and parenting responsibilities should stand as barriers to student achievement.

The reauthorization of ESEA offers a vitally important opportunity to improve educational equity and address the high school dropout crisis in this country in a meaningful way, and ensure that students leave our nation's schools prepared for 21st Century post-secondary learning and careers. Moreover, to do so, there must be a commitment of the financial resources necessary to make serious school reform a reality. Against this backdrop, the Center urges the Senate to provide for the following in the reauthorization.

1. Transition to an Accountability System That Promotes “Data-driven” Reforms That Improve Outcomes for *All* Students.

The reauthorization provides an opportunity to address flaws in the accountability and school improvement systems under NCLB. ESEA must ensure that students not only graduate from high school, but also are college and career ready when they get their diplomas. To do so, the reformed system should trigger the provision of evidenced-based resources and interventions needed to improve student achievement that are specifically tailored to student needs. And the data in support of such nuanced reforms must be comprehensive and take into account the ways in which the intersection of race, ethnicity, and gender operate for both boys and girls in school.

Under the current accountability system, schools do not have to report graduation rates by sex, schools are not held accountable for student performance by sex, and student performance and graduation rate data is not cross-tabulated (i.e., within each race, by sex) for either reporting or accountability purposes. This lack of data and subgroup accountability has allowed policymakers and the media alike to rely on overgeneralizations regarding differences in achievement by gender – masking problems for both males and females, and particularly for students of color, where the intersection of race/ethnicity and gender can be of major import. For example, some assume that girls are succeeding in school, but the available data does not support this assumption. Girls at risk – particularly girls of color – are dropping out of school at alarming rates. In fact, the dropout rate for Asian female students is 19% (not even taking into account variations between female students of different Asian ethnicities); for Latina female students it is 41%; for African American female students it is 43%, and for Native American female students it is 49%.¹ Moreover, females who do not earn a high school diploma are especially likely to face severe economic consequences that significantly affect not only individual students and their families, but also our national economy as a whole.²

To ensure meaningful accountability and school improvement going forward:

- a. Graduation rate and academic assessment data reported by States and LEAs should be fully disaggregated, and cross-tabulated by gender and race/ethnicity; and
- b. The improved accountability and school improvement systems must hold LEAs accountable for the performance of all subgroups of students, fully disaggregated, and cross-tabulated by gender and race/ethnicity.

¹ EPE Research Center, *Diplomas Count 2009: Broader Horizons: The Challenge of College Readiness for All Students*, Education Week, June 2009.

² National Women’s Law Center. *When Girls Don’t Graduate, We All Fail; A Call to Improve High School Graduation Rates for Girls*, October 2007, available at <http://www.nwlc.org/pdf/DropoutReport.pdf>.

Using data cross-tabulated by gender and race/ethnicity will ensure that the accountability system does not mask the needs of smaller subgroups, and that incentives for improvements are “data driven” and not based on assumptions and stereotypes about the needs of boys and girls in school. For example, a study of students who left North Carolina public schools in the 1998-99 academic year found that Black and Hispanic girls were more likely to drop out for attendance reasons in grades 9 and 10 than later in high school, while Black boys were more likely to do so in 11th grade than in earlier years.³ More Black and Hispanic girls than boys dropped out for academic reasons in grades 11 and 12.⁴ And although more boys than girls overall in North Carolina dropped out for disciplinary reasons, more 12th grade Hispanic females left for disciplinary reasons than any other group of students.⁵ These findings defy stereotypical assumptions, and schools responding to this data may undertake very different approaches than they might if they were not held accountable for the performance of subgroups cross-tabulated by gender within each race and ethnicity.

2. Require Collection and Reporting of Data on Pregnant and Parenting Students and Authorize “Pregnant and Parenting Students Access to Education Program”

The reauthorization provides an important opportunity to support a critical subgroup of students that is wholly overlooked under the current legislative scheme: pregnant and parenting students. There are inadequate data on the number of pregnant and parenting students and their performance in school, and ESEA does not require tracking of these data. Yet in a Gates Foundation survey, close to one-half of female dropouts said that becoming a parent played a role in their decisions to leave school, and 33% of female students said it was a *major* factor.⁶ This is an issue for boys too: over one-third of the boys surveyed said it was a factor for them; with 19 percent saying it played a major role in their decisions to drop out.⁷ Significantly, pregnant and parenting students often are highly motivated – in the same survey, those who left school to care for a family member or because they became a parent, more than any other group of dropouts, were “most likely to say they would have worked harder if their schools had demanded more of them and provided the necessary support.”⁸ To that end, ESEA should incorporate the following elements.

- a. Data collection and reporting. To enable educators to address the barriers facing this vulnerable population, ESEA should require separate tracking and reporting of the enrollment numbers, graduation rates, and assessment results for pregnant and parenting students in both mainstream schools and alternative programs or school settings.

³ Elizabeth Stearns & Elizabeth Glennie, *When and Why Dropouts Leave High School*, 38 *Youth & Society* 41-42 (2006).

⁴ *Id.*

⁵ *Id.*

⁶ Peter D. Hart Research Associates, *Gates Foundation Dropouts Survey*, (Sep./Oct. 2005).

⁷ *Id.*

⁸ Bridgeland et al., *The Silent Epidemic: Perspectives of High School Dropouts* 6 (Civic Enterprises, 2006).

- b. Pregnant and Parenting Students Access to Education Program. Pregnant and parenting students can face enormous barriers to graduation (including discrimination that violates Title IX of the Education Amendments of 1972), yet states and local school districts rarely allocate resources to monitor schools' compliance with non-discrimination laws, let alone establish supportive programs to help pregnant and parenting students stay in school and succeed. Congress should authorize a program that would provide grants to state and local educational agencies to formulate policy and offer targeted assistance to pregnant and parenting students in enrolling, attending, and succeeding in secondary school, ensuring school completion, and preparing them for postsecondary opportunities. Also, new and existing programs designed to help "at-risk students" should explicitly include pregnant and parenting students in their definition of those "at risk."

Providing pregnant and parenting students with the supports they need to stay in school and succeed is a critical component of any serious effort to address poverty. And with the proper resources, it can be done – some schools have had much success taking affirmative steps to provide these students with the services and guidance they need while still giving them access to rigorous academic opportunities.

Additionally, because pregnant and parenting students often face enormous barriers to graduation and post-secondary success, health education – including medically accurate and age appropriate sex education regarding the prevention of pregnancy and sexually transmitted infections (STIs) – is a critical component of dropout prevention and ensuring college and career readiness for all students. Therefore, health education, including comprehensive sex education, should be an allowable use of funds under the "Successful, Safe, and Healthy Students" competitive grant program, to ensure that all young people have the tools they need to make responsible decisions about their health. Furthermore, Section 9526(a)(4) of ESEA, which bars the use of funds for the distribution of contraceptives in schools, should be removed in the reauthorization. Family planning counseling and access to contraception is critical to pregnancy and STI prevention for those adolescents who are sexually active. The current restriction limits the ability of school-based health centers, which primarily serve the uninsured and underserved, to determine how to best use their funds to protect the health of their communities.

3. Early Childhood Education

Children's early learning experiences prior to entering school and their elementary and secondary school experiences are inextricably linked in determining children's success. High-quality early learning opportunities help prepare children to enter kindergarten, while effective elementary and secondary schools maintain and build on children's early learning experiences. Therefore, it is essential that the focus on young children in ESEA be strengthened in the upcoming reauthorization. This requires:

- a. Encouraging ESEA programs to collaborate with other major early childhood programs including the Child Care and Development Block Grant, Head Start, early intervention, and state prekindergarten initiatives;
- b. Developing and expanding high quality local early childhood programs through ESEA that meet the needs of working families with young children; and
- c. Linking education reform efforts to young children throughout ESEA, most notably teacher quality and professional development efforts.

These goals can be accomplished by strengthening the transition between early childhood programs and local schools, ensuring that joint professional development opportunities for early childhood staff working with young children in schools and community-based early childhood programs, strengthening professional development for staff working with young children overall, improving data collection regarding the use of Title I funds for young children, encouraging state educational agencies to support investments in early childhood programs at the local level, and increasing funding that could be made available to programs serving children from birth through age five.

First, collaboration between local school districts and early childhood programs could be greatly strengthened by including language in ESEA that parallels transition related provisions in the 2007 Head Start reauthorization. This would require that schools work with their local Head Start agencies as well as other child care and early education programs in their area to ensure that effective transition and coordination policies and practices are in place. This language would create more effective transitions by creating a shared responsibility between local school districts and early childhood programs as opposed to the Head Start requirements which place the burden solely on Head Start programs. It would also make transition more effective by extending these connections and relationships to other early childhood programs in a community.

Collaboration and improved practice can also be encouraged by requiring joint training and professional development opportunities for school-based teachers working with Title I-eligible children and community-based early education teachers, including providers working with children who are English Language Learners. These opportunities should focus on cognitive, social emotional and physical development and approaches to learning as well as appropriate practices for working with English language learners and developmentally appropriate practices to support children's positive development and learning.

Furthermore, ESEA should support training and other opportunities for principals and elementary and secondary education teachers to help them gain a greater understanding of early education, including its importance and its connection to elementary and secondary education, as well as to help them gain an appreciation of how early education is distinct from education for older children.

Many school districts are already using Title I funds for early education and it is essential that this use of funds be maintained as well as expanded. However, given the growing recognition of the importance of the early years to a child's development there must be more than the scant information that is currently available about these efforts. A key step in improving the connection between ESEA and early education is to ensure that basic and current data is available on the extent to which local school districts are using Title I funding for early education. Schools should be required to report on the amount of funding being used, the number of children being served, and the ways in which they are supporting early education. Information on examples of schools' effective use of Title I for early education should also be collected and disseminated.

Additionally, ESEA should support technical assistance to help local districts interested in starting Title I early childhood programs or in beginning or expanding collaborative efforts with the early childhood community. State education departments can play an important role in providing technical assistance and connecting local districts that have success in supporting early learning with other local districts interested in following those models, and ESEA should encourage state education departments in this role.

In order to maximize children's success in school, it also is important for ESEA to include provisions to help ensure that children receive a developmental screening when they enter kindergarten and that they, at a minimum, be referred to the services that they need.

Finally, overall funding for ESEA should be increased, so that schools can expand their use of Title I funds for early education, while also maintaining and expanding funding for other important education initiatives supported with ESEA funds.

4. Require High School Sports Data Collection (S. 471/H.R. 2882)

Consistent with ESEA's emphasis on data transparency, the Reauthorization provides an important opportunity to enact the pending bipartisan bills on high school sports data collection, which would require high schools to report basic data on the number of students in their athletics programs and the expenditures made for their sports teams gender and race. Access to such data will enhance compliance with Title IX and aid in the continued expansion of athletic opportunities for girls at the high school level. This is important because while girls comprise 49 percent of the high school population,⁹ they receive only 41 percent of all athletic participation opportunities, amounting to 1.3 million fewer participation opportunities than male high school athletes.¹⁰ Ensuring equal opportunities for girls in athletics is critical, as participation in athletics leads to better educational outcomes and improved physical and mental health for women. Studies have shown that girls thrive when they participate in sports, are more engaged in school, and

⁹ U.S. Census Bureau, Current Population Survey. (2005). School Enrollment, Table 1. Retrieved April 7, 2009, from <http://www.census.gov/population/socdemo/school/cps2005/tab01-01.xls>.

¹⁰ National Federation of State High School Associations (NFHS). *2007-2008 High School Athletics Participation Survey*. (<http://www.nfhs.org/>).

less likely to get pregnant, drop out of school, do drugs, smoke, or develop mental illness.¹¹

The high school sports data collection also could reduce the incidence of childhood obesity by helping to ensure that schools are providing all their students with equal opportunities to benefit from school sports programs. The *New York Times* recently highlighted research that found that the “increase in girls’ athletic participation caused by Title IX was associated with a 7 percent lower risk of obesity 20 to 25 years later, when women were in their late 30s and early 40s.” The study notes that while a 7 percent decline in obesity is modest, “no other public health program can claim similar success.”¹² Simply put, properly enforcing Title IX and increasing children’s physical activity can lower obesity risks even into adulthood.

Moreover, much of the data on athletics program participation and expenditures is already collected by schools, just not made publicly available. Kentucky and Georgia have adopted and successfully implemented similar state legislation and New Mexico passed similar legislation in April of 2009. According to officials in those states, it takes school officials only two to six hours per year maximum, depending on the number of sports offered, to transfer this information into a report that is publicly available.¹³ Since the implementation of the state legislation, the administrators of the compliance programs in the Kentucky and Georgia State High School Athletic Associations have seen significant improvements in the Title IX compliance of their member schools.¹⁴ In December 2009, the District of Columbia City Council approved its own version of this legislation, the “Title IX Compliance Act of 2009.”

5. Collect Data and Support Programs to Increase Girls’ Participation in and Completion of STEM Courses

Female students continue to be sorely underrepresented in STEM education. For example, fewer girls than boys take advanced placement (AP) exams in STEM-related subjects such as calculus, physics, computer science, and chemistry, and on average, girls who take STEM AP exams earn lower scores than boys.¹⁵ Although women are the majority of college students, they are far less likely than their male peers to plan to major

¹¹ *As Girls Become Women, Sports Pay Dividends*, The New York Times, Feb. 16, 2010, available at <http://www.nytimes.com/2010/02/16/health/16well.html>; Women’s Sports Foundation. (December 12, 2007). *Women’s Sports & Physical Activity Facts & Statistics*. Retrieved January 16, 2008, from http://www.womenssportsfoundation.org/binary-data/WSF_ARTICLE/pdf_file/191.pdf.

¹² The New York Times (February 16, 2010). *As Girls Become Women, Sports Pay Dividends*. Retrieved March 1, 2010, from <http://www.nytimes.com/2010/02/16/health/16well.html>.

¹³ Conversations between Women’s Sports Foundation staff and compliance officers at the Georgia and Kentucky State High School Athletic Associations and high school athletic directors in Missouri., May 2007.

¹⁴ *Id.*

¹⁵ College Board, *AP Program Summary Report 2008*, available at <http://professionals.collegeboard.com/profdownload/program-summary-report-09.pdf>.

in a STEM field.¹⁶ In 2006, almost one-third of all male first-year students (29 percent) planned to major in a STEM field, compared with only 15 percent of all female first-year students.¹⁷ Excluding the biological sciences, the gender disparity is even more significant: just over one-fifth of male students in their first year of college planned to major in engineering, computer science, or the physical sciences, compared with only about 5 percent of their female peers.¹⁸ And women continue to be underrepresented among STEM faculty and other STEM-related careers.

ESEA should encourage states and schools to recruit and retain girls in the STEM field by taking the following steps. First, ESEA should ensure that state and districts collect and report data on access to and completion of science, technology, engineering and math courses by race/ethnicity and gender. Reporting this information will allow school districts to identify and address any disparities in access to STEM promptly. Second, ESEA should provide incentives for states and local districts to increase girls' participation in STEM at the K-12 level, including: (1) training teachers and counselors in gender-fair methods that will reduce reliance on gender-based stereotypes and differential treatment based on sex, and thus will help to eliminate hostile learning environments and maximize academic achievement, postsecondary transition and career aspirations for both boys and girls; (2) integrating career development practices in counseling and instruction that encourages career exploration that breaks down gender stereotypes and increases options for all students, including girls' entrance into STEM career fields; (3) promoting STEM education through federally-funded after-school programs, summer programs, mentoring programs, field trips, and internships; and (4) providing technical assistance to schools to help them understand their obligations under Title IX and how the law applies in the STEM context.

Together, these efforts would help to narrow the current access and achievement gaps for girls and underrepresented minorities in STEM subjects and encourage more of those students to pursue STEM fields of study and careers. Also, the Women's Educational Equity Act (WEEA), first enacted in 1974 to help educational agencies and institutions meet the requirements of then newly-enacted Title IX, funds effective and replicable gender equity programs, including promising STEM programs. WEEA was reauthorized in 2001 when No Child Left Behind was enacted, and it should remain part of ESEA. When WEEA is funded appropriately, it can provide critical technical assistance to schools as they work to comply with Title IX.

¹⁶ American Association of University Women, *Why So Few? Women in Science, Technology, Engineering, and Mathematics*, at 8 (2010), available at <http://www.aauw.org/research/upload/whysofew.pdf>.

¹⁷ *Id.* (citing National Science Foundation. Division of Science Resources Statistics (2009b), *Women, minorities, and persons with disabilities in science and engineering: 2009* (NSF 09-305). Arlington, VA. Retrieved December 22, 2009, from www.nsf.gov/statistics/wmpd).

¹⁸ *Id.*

6. Ensure a Positive School Climate and Support the Health and Safety of All Students

To be effective and improve student achievement, schools must provide students with a positive and safe learning environment. Feeling unsafe at school has been correlated with declining academic performance, skipping school, and dropping out.¹⁹ The ESEA reauthorization accordingly must provide incentives for schools to swiftly address threats to students' physical and mental health and to create a positive school climate conducive to learning. For starters, ESEA should provide incentives for schools to adopt stronger policies to deter and address bullying and harassment.

Two bipartisan measures would make great strides in ensuring that learning environments for students are safe. First, the Safe Schools Improvement Act (H.R. 2262) would direct States to help districts and schools prevent and respond to bullying and harassment, by adopting data collection and reporting requirements (regarding the incidence and prevalence of bullying and harassment and students' perceptions regarding such incidents and the school's responsiveness) and by adopting, disseminating, and implementing policies and procedures to prevent and address such conduct. In addition to supporting provisions to prevent and address bullying and harassment, the Student Non-discrimination Act (H.R. 4530) would protect against discrimination in public schools based on actual or perceived sexual orientation or gender identity and provide meaningful and effective remedies.

ESEA should also encourage schools to apply positive approaches to discipline to create healthier schools for students and teachers alike and better secure students' right to a quality education. The approach to discipline in many schools has the effect of pushing students out of school and teachers out of the profession. Many girls, particularly girls of color, are affected by disproportionate punishments for minor infractions at school. For example, in Alabama, a high school student was sent to an alternative school for "drug use" after taking Motrin to relieve menstrual cramps. In New York, a middle school student was arrested for writing "okay" on her desk. The Positive Behavior for Safe and Effective Schools Act (H.R. 2597) would fund efforts that create positive learning environments to help keep children in school – a practice that has been proven to reduce school discipline referrals, support improved academic outcomes, and improve perceptions of school safety.

Additionally, ESEA should require data collection and reporting on school disciplinary rates, which are currently the highest they have been in our nation's history. Moreover, exclusionary discipline practices are used disproportionately against students of color and students with disabilities. For example, African American students, including African American girls, are 3 times as likely as their white peers to be suspended and 3.5 times as likely to be expelled. To enable parents and schools to track and address disparate discipline practices, schools should annually report the numbers of in-and out-of-school suspensions, the number of students receiving multiple suspensions, expulsions, instances

¹⁹ American Association of University Women Educational Foundation, *Hostile Hallways: Bullying, Teasing, and Sexual Harassment at School* 36-38 (2001), <http://www.aauw.org/research/hostile.cfm>.

of corporal punishment, school-based arrests and referrals to law enforcement agencies, and the number of referrals to disciplinary alternative schools. The data collected should be disaggregated by race, gender, special educational status, socioeconomic status, and ELL status, and cross-tabulated in each category by gender to allow for more insightful review.

To improve schools' ability to maintain a healthy learning environment for all students, the revised accountability and improvement system should include measures of school discipline rates and school climate factors. A determination that a particular school is not meeting appropriate school climate standards should trigger technical assistance and resources from SEAs and LEAs so that school can implement successful, proven and promising practices for improving the school environment.

ESEA also should provide for the collection of better information on alternative schools, about which there is very minimal data. Some alternative programs are models for providing individualized instruction, varied curricula and student support services, but many disciplinary alternative schools are dead-end programs leading to dropout. Alternative schools for pregnant and parenting students are sometimes similarly problematic, offering programs that are unequal to those available at the student's home school in violation of Title IX. To encourage increased transparency and rigor, ESEA should require alternative schools to report the same accountability data other schools provide, as well as additional enrollment information, such as average length of enrollment, peak enrollment, number of absences per year, and number of students who graduate, drop out, or re-enroll in their home school upon leaving the alternative school.

7. Adopt and Strengthen Programs to Engage Communities and Address Barriers that Decrease Student Engagement

As we observed in the report the National Women's Law Center issued last year with the Mexican American Legal Defense and Educational Fund, *Listening to Latinas: Barriers to High School Graduation*: "Girls with long-term plans or educational aspirations have more hope for the future, are less likely to get pregnant, and become more engaged in school and related activities – all factors making it more likely that they will graduate from high school and make it to college."²⁰ Mentors can be critical to empowering students – particularly girls of color who may not have academic or career role models they can relate to – and enhancing their possibilities for success. And research confirms that a relationship with a caring adult helps students to stay in school and graduate. Schools can and should play a part in connecting students to mentors or role models and facilitating goal setting, and ESEA should provide resources and other incentives to encourage schools to adopt such programs.

Another critical element of student success is parental involvement, but many parents face barriers to consistent involvement in their child's education. ESEA should increase dedicated funding and the emphasis in state and local education plans to provide more

²⁰ National Women's Law Center and MALDEF, *Listening to Latinas: Barriers to High School Graduation*, at 28 (2009), www.nwlc.org/listening.

effective parental involvement strategies, including professional development for both parents and teachers regarding student assessment, parental obligations, parental literacy programs, notice of student rights for inter-district transfers, and supplemental services, etc., and school processes. In addition, schools should be required to establish a clearly defined administrative process for notifying parents about their schools' compliance under ESEA.

8. Clarify that Supplemental Educational Services Providers are Subject to Civil Rights Laws

Under the current accountability system, school districts with Title I schools that fall short of state standards for three years or more must offer supplemental educational services (SES) to low-income students who attend these schools. During the last administration, the Department of Education asserted that SES providers are not recipients of federal funds and thus are not directly subject to federal civil rights laws. This position is contrary both to those laws and to congressional intent as demonstrated by section 9543 of NCLB, which states: "Nothing in this Act shall be construed to permit discrimination on the basis of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, or disability in any program funded under this Act." Congress intended non-discrimination requirements to apply to *any* entity that receives funds through ESEA, which SES providers clearly do, whether or not they would qualify as "recipients" of federal financial assistance for purposes of Title VI and other civil rights statutes. It is critical, whatever role SES providers may play in a reformed system, that they serve the full range of students, including English language learners and students with disabilities, and do not illegally discriminate.

The National Women's Law Center appreciates the opportunity to provide initial input regarding the reauthorization of ESEA. We look forward to working with members of your Committees to ensure that all of our nation's children have equal opportunities to learn and succeed. If you have any questions, please feel free to contact Fatima Goss Graves, Helen Blank or Lara S. Kaufmann at 202-588-5180.

Sincerely,



Marcia D. Greenberger
Co-President
National Women's Law Center