

April 14, 2015

*Via electronic mail*

Chairman Lamar Alexander  
Committee on Health, Education,  
Labor and Pensions  
428 Dirksen Senate Office Building  
Washington, DC 20515

Ranking Member Patty Murray  
Committee on Health, Education,  
Labor and Pensions  
525 Dirksen Senate Office Building  
Washington, DC 20515

Dear Chairman Alexander and Ranking Member Murray,

On behalf of the National Women's Law Center, an organization that for 42 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 urge the HELP Committee to improve the Every Child Achieves Act of 2015 in markup, with amendments that enhance data reporting and strengthen the accountability framework.

Any reauthorization of ESEA must adopt an accountability and school improvement framework that will meaningfully improve educational equity and close achievement gaps so that *all* students graduate high school prepared for 21st Century post-secondary learning and careers. While the current ESEA structure needs improvement, its essential role addressing the needs of the most disadvantaged students must be maintained. Congress must not give unfettered discretion to states and school districts that historically have disregarded the needs and potential of disadvantaged students. The federal government's oversight is critical to ensuring that boys and girls of color, low-income students, English learners, and students with disabilities in every state have access to a robust and well-rounded curriculum and supports that address a range of student needs so that they are better prepared to succeed in the classroom.

We note that the Every Child Achieves Act, as introduced, contains some measures that will help track and promote progress toward the achievement of college- and career-readiness for all students. We applaud the inclusion of provisions that:

- Require states to conduct annual, statewide assessments (in grades 3-8 and at least once in high school) for all students that are aligned with and measure each student's progress toward meeting those goals and standards, with appropriate accommodations provided for English learners and students with disabilities;
- Require the reporting of data on school climate indicators, in addition to assessment results and graduation rates; and
- Ensure that federal dollars are not "portable" so they can be targeted to historically underserved students and schools.

However, the bill does not go far enough to ensure states take action to address the needs of disadvantaged students. We urge the Committee to address the following issues, which are core to our support.

### **1. Enhance State Report Cards to Promote Data-Driven, Targeted Interventions.**

The reauthorization provides an opportunity to address a gap in ESEA's current data reporting requirements. Under the current system, and under the Every Child Achieves Act as introduced, State Report Cards must include academic assessment and graduation rate data disaggregated by subgroups, including gender, but student performance and graduation rate data are not reported in a cross-tabulated manner (i.e., within each subgroup, further segmented by sex so that, for example, schools and communities know what is happening for key population subgroups such as African American boys and Latina girls). The lack of cross-sectional data 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, many of whom face significant barriers stemming from unconscious bias and the intersection of racial and gender stereotypes. Analyzing data segmented by subgroups (e.g. by sex and by disability within each racial/ethnic group) will help bring to light barriers that otherwise would go unnoticed, and thus will lead to better targeted and more effective interventions.

Importantly, this recommendation is not tantamount to adding a new data requirement to ESEA, as schools already collect these data. The only difference is that the data reported by race/ethnicity will be disaggregated further, by sex and by disability status (subject to N size restrictions and student privacy protections). And this requirement is not burdensome, as existing longitudinal data systems with individual student identifiers – which all 50 States, the District of Columbia, and Puerto Rico already have – can easily cross-tabulate these data, with the push of a button.

Data transparency is critical to exposing disparities in access and barriers to equal opportunity, and it supports parent involvement and community-based efforts to improve learning conditions for vulnerable girls and boys. Therefore, in addition to data about academic achievement and graduation rates, Congress should require the reporting of data about access to curriculum, coursework materials (including technology), and other supports aligned with college- and career-ready standards (e.g., college-preparatory courses in middle and high schools; college-credit-eligible classes like AP, IB, dual enrollment programs; and high quality career and technical education programs), and to be meaningful, those data too should be disaggregated by sex within each subgroup. Additionally, Congress should require the reporting of data segmented by sex and disability within each race/ethnicity category on school climate indicators (including bullying and harassment, the use of exclusionary discipline practices, use of police in schools, and student referrals to law enforcement), opportunity measures (including access to pre-K, technology, and as discussed below, athletics opportunities), attendance, grade promotion rates, and per-pupil expenditures. Finally, data on Asian American/Pacific Islander students should be further disaggregated by national origin to shed light on disparities that may be hidden in this otherwise large and diverse category of students.

## **2. Promote Access to Early Childhood Education for All.**

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.

We support a dedicated federal funding stream in ESEA to improve access to high-quality early childhood education for children in low- and moderate-income families delivered through schools, community-based child care, and Head Start programs. This funding should be in addition to existing investments in early care and education and in addition to existing education funding. States, Tribes, and outlying areas should be able to use the funds to support and expand high-quality early learning opportunities for infants, toddlers, and preschoolers from low- and moderate-income families at or below 200 percent of poverty. Early education programs would have to meet a set of high-quality standards, including having well-qualified teachers who receive compensation and benefits comparable to K-12 teaching staff, providing ongoing professional development, operating on a full-school-day schedule, using developmentally appropriate curricula, setting low child-to-staff ratios and small class sizes, making comprehensive services available for children and families, and ensuring family engagement opportunities.

## **3. Improve Access to Education for Pregnant and Parenting Students.**

Overall, roughly one in four girls in the U.S. become pregnant at least once before age 20, and for girls of color the rates are higher: one in three Latinas and four in ten African American girls get pregnant at least once by age 20.<sup>1</sup> And because of the barriers these students face to enrolling, attending, and succeeding in school – including illegal discrimination against them by their schools, in violation of Title IX – pregnancy and parenting responsibilities are significant risk factors for dropout. Only 51 percent of women who have children as teenagers get a high school diploma by age 22, compared to 89 percent of women who do not give birth as teens.<sup>1</sup> Yet without a high school diploma, the prospects for young mothers of finding a job, earning a living wage, and achieving economic security are dim, and the children of dropouts are more likely to drop out of school themselves.

Significantly, many students who become pregnant as teenagers are highly motivated to succeed – indeed, many describe a renewed sense of determination to finish school and find a career once they learn they will be having a child – but they fall through the cracks because schools either disregard their very real needs or harbor low expectations of them and even push them out. Only a fraction of school districts undertake serious efforts to help these vulnerable students and improve their chances of success and those of their children.

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<sup>1</sup> Kate Perper, M.P.P., Kristen Peterson, B.A., and Jennifer Manlove, PhD, Child Trends Fact Sheet: *Diploma Attainment Among Teen Mothers* (Child Trends, 2010), at [http://www.childtrends.org/Files/Child\\_Trends-2010\\_01\\_22\\_FS\\_DiplomaAttainment.pdf](http://www.childtrends.org/Files/Child_Trends-2010_01_22_FS_DiplomaAttainment.pdf).

Providing pregnant and parenting students (PPS) with the supports they need to stay in school and succeed is an essential component of any serious effort to improve graduation rates and college- and career-readiness. Congress must take this opportunity to address the needs of this vulnerable group of students and:

- Instruct states and school districts to include PPS in their Title I plans. The plans submitted by states and school districts should describe how they address the needs of PPS so they are enrolled in, attend, and succeed in school. This requirement was included in the Strengthening America's Success Act (SASA) of 2013, which was passed by the HELP Committee in the 113th Congress.
- Require the reporting of non-personally identifiable data on the enrollment, academic achievement, and graduation rates of PPS. The SASA bill passed by the HELP Committee in the last Congress also called for the inclusion in State Report Cards of (non-personally identifiable) data on PPS and their outcomes (to the extent it is available, such as by self-reporting the way that single parent data is collected per the Perkins Career and Technical Education Act). Currently, most schools do not track the number of PPS they have or their achievement, and there is minimal data on alternative schools and programs. To enable educators to address the unique barriers facing this vulnerable population, ESEA should require separate tracking and reporting of the enrollment numbers, graduation rates, and assessment results for PPS in both mainstream schools and alternative programs or school settings.
- Encourage more targeted use of existing funds. The reauthorized ESEA should clarify, among other things, that a wide range of academic and other support services that help to keep PPS in school and on track for success are allowable uses of Title I and Title IV funds.

#### **4. Require High School Sports Data Collection (S. 217 in 113th).**

Consistent with ESEA's emphasis on data transparency, this reauthorization bill provides an important opportunity to enact the High School Data Transparency Act (S. 217), a bill which has long had bipartisan support in both houses of Congress. The bill's provisions 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. Requiring, in Title I, that all schools provide access to such data will enhance compliance with Title IX of the Education Amendments of 1972 and aid in the continued expansion of athletic opportunities for girls at the high school level. This is important because girls in high school still receive about 1.3 million fewer opportunities to participate in sports than boys. Ensuring equal opportunities for girls in athletics is critical, as participation in athletics leads to better educational and employment outcomes, improved physical and mental health, and lower rates of sexual activity and unplanned pregnancy.

#### **5. Support the Health and Safety of All Students.**

To be effective and improve student achievement, the reauthorization of ESEA must require schools to address threats to students' physical and mental health and to create a positive school climate conducive to learning. The law also should require that the performance targets set by states

include multiple measures of student success; not only achievement and graduation rates, but also school climate measures, including progress made in preventing and addressing sexual harassment and violence and rates of suspension, expulsion and other exclusionary discipline practices. And schools with high or disproportionate rates of bullying, harassment, violence and exclusionary discipline should receive targeted resources and interventions to address school climate.

### **A. Sexual Harassment, Violence, and Trafficking**

Sexual harassment, including sexual violence, is a problem too many girls face in school. According to one survey, 56 percent of school-aged girls report experiencing sexual harassment.<sup>ii</sup> The same study found that African American students were more likely than white students to “change the way they go to or from schools,” or even change to a new school, in response to sexual harassment.<sup>iii</sup> And qualitative studies have observed differences in the ways African American and white girls experience harassment. For example, in a 2001 national survey of 8th- through 11th-graders, 67 percent of African American girls reported being “touched, grabbed, or pinched in a sexual way,” compared to 56 percent of white girls, and 28 percent of African American girls reported being “forced to kiss someone,” compared to 15 percent of white girls.<sup>iv</sup> Another survey showed that six in 10 students (63 percent) felt unsafe in school because of their sexual orientation and four in ten students (44 percent) felt unsafe in school because of their gender identity.<sup>v</sup> Feeling unsafe at school has been correlated with declining academic performance, skipping school, and dropping out.<sup>vi</sup> Therefore, the ESEA reauthorization should require schools to swiftly address threats to students’ physical and mental health and to create a positive school climate conducive to learning.

Two bipartisan measures would make great strides in ensuring that learning environments for students are safe, and should be included in a reauthorized ESEA. First, the Safe Schools Improvement Act (S. 403 in the 113th) 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 based on protected characteristics, including sexual orientation and gender identity. Second, the Student Non-Discrimination Act (S. 1088 in the 113th) would protect against discrimination in K-12 public schools based on actual or perceived sexual orientation or gender identity or a student’s association with someone who is LGBT and would provide meaningful and effective remedies. To ensure that schools are welcoming places where all students can learn, both of these bills should be incorporated into the ESEA reauthorization.

The reauthorization also should include the new Teach Safe Relationships Act, being introduced this week by Senator Kaine. The bill would provide for the development and use of curricula for adolescents that incorporate elements of effective and evidence-informed programs that promote safe relationship behavior and prevent teen dating violence, sexual assault, and harassment. It would enable secondary schools to train administrators, teachers, and students about safe relationship behavior, and would assist State and local educational agencies and institutions in meeting their Title IX obligations.

Additionally, girls of color are disproportionately vulnerable to involvement in the child sex trafficking industry. Victims of child and teenage sex trafficking in the U.S. are overwhelmingly (1) female; and (2) members of racial and ethnic minorities.<sup>vii</sup> Victims of sex trafficking experience serious trauma that causes damage to their mental and physical health and disrupts learning, and they also are likely to suffer from poor school attendance and engagement. Too often, instead of getting the services they need, those who are victimized get arrested for prostitution and treated as criminals. Because sex trafficking has a significant impact on school-age girls, schools can be critical points of intervention for those at-risk and those involved in child sex trafficking, and can offer individualized support to help those who are particularly vulnerable. ESEA should require districts to train staff to identify potential victims of trafficking and signs of trauma, and provide targeted resources for schools to provide culturally-responsive, gender-responsive, trauma-informed support, including mental health services.

## **B. School Discipline**

Exclusionary school disciplinary practices, another barrier to learning that the ESEA reauthorization should address, are used disproportionately against students of color and students with disabilities. For example, while African American males are the most likely to be disciplined in school, African American females are also disproportionately suspended and expelled. In fact, during the 2011-12 school year, 12 percent of all African American female pre-K-12 students received an out-of-school suspension, which is six times the rate of white girls and more than any other group of girls and several groups of boys.<sup>viii</sup> Additionally, 19 percent of African American girls with disabilities received out-of-school suspensions, compared to just 6 percent of white girls with disabilities.<sup>ix</sup> African American girls are more likely than white girls to be suspended for minor offenses like dress code violations, or subjective offenses like “defiance” or “disobedience,” and studies indicate that stereotypes of Black women as hyper-sexualized and aggressive may inform these disciplinary practices.<sup>x</sup>

Because of such severe and frequent discipline, African American girls spend more time out of the classroom, which contributes to poor academic performance, lower graduation rates, and higher representation in the juvenile justice system.

To ensure that girls of color have a fair chance to succeed in school, and to enable parents and schools to track and address disparities in discipline practices, the ESEA reauthorization should:

- Prohibit zero-tolerance policies;
- Require schools to annually report to the public the numbers of in-and out-of-school suspensions, the number of students receiving multiple suspensions, expulsions, instances of corporal punishment, school-based arrests and referrals to law enforcement agencies, the number of referrals to disciplinary alternative schools, and any progress in reducing disparities in discipline; these data should be disaggregated by sex, race, disability status, socioeconomic status, and English learner status, and cross-tabulated by sex in each category to allow for more insightful review and decision-making;
- Require schools to conduct regular audits of discipline policies, practices, and data to identify and address disparities and limit the use of suspensions and expulsions; and

- Encourage schools to implement positive behavior interventions and culturally-responsive supports, social and emotional learning, peer mediation, conflict resolution, and restorative justice practices as alternatives to punitive discipline practices and police in schools.

A determination that a particular school is not meeting academic or climate standards should trigger technical assistance and resources from states and districts so that the school can implement successful, proven and promising practices for improving the learning environment for all students.

### **C. Health Education**

Additionally, 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 “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.

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

While progress has been made over the last 40 years, girls and women are still vastly underrepresented in numerous STEM fields of study, particularly computer science. Not only is increasing the participation of women and underrepresented minorities in these fields a civil rights imperative, but also it is critical to our country’s global competitiveness. More must be done to recognize and address barriers to the participation of women and girls in STEM fields and to encourage women and girls to enroll in and complete STEM programs.

To that end, ESEA should include initiatives to increase numbers of underrepresented students in STEM fields, including targeted outreach to and recruitment of students underrepresented in high-level STEM programs. It 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 sex, as well as grade level, special education status, and English learner status. Reporting this information will allow school districts to identify and address any disparities in access to STEM promptly. ESEA also should help states and districts to increase girls’ participation and confidence in STEM at the K-12 level, by providing for: (1) training for teachers and counselors in gender-fair methods that will reduce implicit bias and reliance on gender-based stereotypes, and thus will help to eliminate hostile learning environments and maximize academic achievement and non-traditional career aspirations for both boys and girls; (2) training for counselors and teachers in career development practices that break down gender stereotypes and encourage STEM career exploration for all students; (3) promotion of STEM education through federally-funded after-school programs,

summer programs, mentoring programs, field trips, and internships; and (4) 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.

## **7. Reauthorize and Strengthen the Women's Educational Equity Act (WEEA).**

This law was first enacted in 1974 to help educational agencies and institutions meet the requirements of then newly-enacted Title IX. The goal of WEEA is to fund effective and replicable gender equity programs and disseminate information about recommended programs and practices so that teachers, parents and students will learn to avoid sex discrimination and refrain from reinforcing stereotypes that limit educational opportunities for all students. In addition to reauthorizing WEEA, it is important that its funding be increased and that some of the funding be set aside for technical assistance. In more recent years, WEEA's budget has been eliminated entirely; before that almost all of WEEA's tiny budget of less than \$3 million annually was allocated to local projects and the work on identifying and disseminating replicable, effective gender equity model programs was curtailed. Among other things, there has been little attention to federal support for, or assistance to, Title IX coordinators at any level, despite the fact that Title IX regulations require all recipients of federal funding to appoint Title IX coordinators. When WEEA is funded appropriately, it can provide critical technical assistance to schools as they work to comply with Title IX. This additional support is needed, as sex discrimination in education persists.

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The Center appreciates the opportunity to make recommendations for the markup of the Every Child Achieves Act and looks forward to working with the HELP Committee as the ESEA reauthorization process continues. If you have any questions, please feel free to contact Fatima Goss Graves, Helen Blank or Lara S. Kaufmann at 202-588-5180.

Sincerely,



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Vice President for Education & Employment



Lara S. Kaufmann  
Senior Counsel and Director of  
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cc: HELP Committee members



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<sup>i</sup> National Campaign to Prevent Teen and Unplanned Pregnancy, *Fast Facts: Teen Pregnancy in the United States* (August 2014), available at [http://thenationalcampaign.org/sites/default/files/resource-primary-download/fast\\_facts\\_-\\_teen\\_pregnancy\\_in\\_the\\_united\\_states\\_aug\\_2014\\_0.pdf](http://thenationalcampaign.org/sites/default/files/resource-primary-download/fast_facts_-_teen_pregnancy_in_the_united_states_aug_2014_0.pdf).

<sup>ii</sup> CATHERINE HILL & HOLLY KEARL, AM. ASS'N OF UNIV. WOMEN, *Crossing the Line: Sexual Harassment at School 11* (Nov. 2011), available at <http://www.aauw.org/files/2013/02/Crossing-the-Line-Sexual-Harassment-at-School.pdf>.

<sup>iii</sup> *Id.* at 25.

<sup>iv</sup> Am. Ass'n of Univ. Women Educ. Found., *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School 24-25* (2001), available at <http://www.aauw.org/files/2013/02/hostile-hallways-bullying-teasing-and-sexual-harassment-in-school.pdf>.

<sup>v</sup> JOSEPH G. KOSCIW ET AL., GAY, LESBIAN & STRAIGHT EDUC. NETWORK, *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools 20* (2012), available at <http://glsen.org/sites/default/files/2011%20National%20School%20Climate%20Survey%20Full%20Report.pdf>.

<sup>vi</sup> 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>.

<sup>vii</sup> Parsons et al., Ctr. for Am. Progress, *3 Key Challenges in Combating the Sex Trafficking of Minors in the United States* (2014), available at <http://cdn.americanprogress.org/wp-content/uploads/2014/04/HumanTrafficking-brief.pdf>.

<sup>viii</sup> In the 2011-12 school year, 12% of all African American girls in grades pre-K-12 were suspended from school—six times the rate of white girls and higher than the rate for any other group of girls, and white, Latino, and Asian American boys. CIVIL RIGHTS DATA COLLECTION, U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, ISSUE BRIEF NO. 1, DATA SNAPSHOT: SCHOOL DISCIPLINE 3 (2014), available at <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

<sup>ix</sup> *Id.* at 4.

<sup>x</sup> Jamilya J. Blake, Bettie Ray Butler & Charlotte Danielle Smith, *Challenging Middle Class Notions of Femininity: The Cause for Black Females' Disproportionate Suspension Rates*, in *CLOSING THE SCHOOL DISCIPLINE GAP: RESEARCH TO PRACTICE* (Daniel Losen ed., forthcoming) (manuscript at 4, on file with National Women's Law Center) (citing Regina Rahimi & Delores D. Liston, *What Does she Expect when She Dresses Like That? Teacher Interpretation of Emerging Adolescent Female Sexuality*, 45 EDUC. STUD. 512 (2009)).