



March 3, 2017

Senator Mitch McConnell, Majority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

Senator Charles Schumer, Minority Leader  
United States Senate  
322 Hart Senate Office Building  
Washington, DC 20510

**RE: Opposition to H.J. Res. 57/S.J. Res. 25 disapproving the Every Student Succeeds Act state plans and accountability rule**

Dear Senator McConnell and Senator Schumer:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), we write to express our opposition to H.J. Res. 57/S.J. Res. 25 disapproving the Every Student Succeeds Act (ESSA) state plans and accountability rule under the Congressional Review Act.

Founded in 1940 by Thurgood Marshall, LDF is the nation’s oldest civil rights law organization. For 76 years, LDF has relied on the Constitution and federal and state civil rights laws to pursue equality and justice for African-Americans and other people of color. LDF litigated and won the historic U.S. Supreme Court case *Brown v. Board of Education*, which established the principle of equal access to education for all students and outlawed racial segregation in our nation's schools.<sup>1</sup> Since *Brown*, LDF has continued to represent students in school districts, primarily in the South, to ensure they receive quality and equitable educational opportunities.<sup>2</sup>

---

<sup>1</sup> 347 U.S. 483 (1954).

<sup>2</sup> See, e.g., *Thomas, et al. v. St. Martin Parish School Dist., et al.*, Civil Action No. 6:65-cv-11314, Doc. 178 (W.D. La., Jan. 25, 2016) (approving a school desegregation plan designed to racially integrate St. Martin Parish School District and ensure African-American students have equal access to quality educational opportunities), <http://www.naacpldf.org/update/ldf-announces-consent-decree-thomas-v-school-board-st-martin->; see also *LDF Urges Robust Implementation of Every Student Succeeds Act (ESSA) to Close Achievement Gaps and Promote Student Success*, <http://www.naacpldf.org/case-issue/ldf-urges-robust-implementation-every-student-succeeds-act-essa-close-achievement-gaps-an->; Br. for the Black Student Alliance at the University of Texas at Austin, the Black Ex-Students of Texas, Inc., and the NAACP Legal Defense & Educational Fund, Inc. as Amici Curiae, *Fisher v. University of Texas at Austin*, 2015 WL 6690039 (Nov. 2, 2015),

The purpose of ESSA is “to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.”<sup>3</sup> The ESSA rule upholds the civil rights legacy of the law by including all students and historically underserved children and youth in accountability decisions, ensuring that meaningful action is taken when schools fail to meet the needs of all students or student subgroups.<sup>4</sup>

H.J. Res. 57/S.J. Res. 25 would undermine the work and expertise utilized in constructing the ESSA rule. The process of soliciting public feedback on potential ESSA regulations began long before a draft rule was published. On December 22, 2015, the Department of Education issued a request for information and noticed two public meetings, “soliciting advice and recommendations from interested parties prior to publishing proposed regulations.”<sup>5</sup> After five months of considering the recommendations, the Department of Education issued a draft rule on May 31, 2016. The draft rule accumulated twenty-one thousand public comments. The final rule was issued November 29, 2016. This robust and transparent public engagement process was appropriate and needed. Furthermore, it was a prototypical demonstration of how the rulemaking process is intended to work. A purpose for the establishment of the Department of Education was “to encourage the increased involvement of the public, parents, and students in federal education programs.”<sup>6</sup> The regulatory process did just that in providing parents, students, advocates, educators, and others a meaningful opportunity to be heard. By disregarding feedback from the masses of people involved, H.J. Res. 57/S.J. Res. 25, would effectively silence the voices of those most affected by the regulations, in direct contradiction to a key purpose behind establishing the Department of Education and with ESSA itself, which requires stakeholder involvement through the implementation of the law.<sup>7</sup>

---

[http://www.naacpldf.org/files/case\\_issue/14-981%20Obsac%20The%20Black%20Student%20Alliance%20at%20the%20University%20of%20Texas%20at%20Austin%20et%20al.\\_1\\_1.pdf](http://www.naacpldf.org/files/case_issue/14-981%20Obsac%20The%20Black%20Student%20Alliance%20at%20the%20University%20of%20Texas%20at%20Austin%20et%20al._1_1.pdf).

<sup>3</sup> Every Student Succeeds Act, Public Law No. 114.95, S. 1177, 114th Cong. §1001 (Dec. 10, 2015) (hereinafter, ESSA).

<sup>4</sup> U.S. Department of Education, Every Student Succeeds Act—Accountability, State Plans, and Data Reporting: Summary of Final Regulations, 1, (Nov. 28, 2016), <https://www2.ed.gov/policy/elsec/leg/essa/essafactsheet1127.pdf>.

<sup>5</sup> Request for information and notice of meetings, 80 Fed. Reg. 79528 (Dec. 22, 2015).

<sup>6</sup> PL 96–88 (S 210), PL 96–88, OCTOBER 17, 1979, 93 Stat 668.

<sup>7</sup> ESSA, *supra* note 3, at §1111(a)(1)(A).



Any issues with the current version of ESSA should be addressed through new regulations issued by the Department of Education. As articulated above, the process of drafting new regulations are transparent, thorough, and involve input from stakeholders and the public. In addition to soliciting the expert advice of private citizens, including practitioners, parents, etc., and institutions, the Department of Education itself has a level of expertise Congress does not possess. In fact, the key responsibilities of the Department of Education are to “promote improvements in the quality and usefulness of education through federally supported research, evaluation, and sharing of information” and “to improve the management and efficiency of Federal education activities . . . for the dispersal of Federal funds.”<sup>8</sup> Refining ESSA falls squarely within the scope of authority granted to the Department of Education. It is counterproductive to stand in the way of the Department of Education, in the manner proponents of H.J. Res. 57/S.J. Res. 25 seek to do, preventing it from doing precisely what it was established to do.

ESSA addresses a key issue our country has been grappling with for decades—equitable education for every child. The Elementary and Secondary Education Act (“ESEA”), the original version of the law, was implemented to “provide financial assistance to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their education programs by various means.”<sup>9</sup> That important creed remains the goal of ESSA today. The civil rights foundation of this rule speaks, not only to its aspirational benefits, but the deep seeded need for such a regulation.

Thank you for considering this request. If you have any questions, please contact us at 202-682-1300.

Sincerely yours,

Todd A. Cox  
Director of Policy

Monique L. Dixon  
Deputy Director of Policy

---

<sup>8</sup> PL 96–88 (S 210), PL 96–88, OCTOBER 17, 1979, 93 Stat 668.

<sup>9</sup> 79 Stat. 27-58.