



April 13, 2015

Chairman Lamar Alexander  
Ranking Member Patty Murray  
Senate Committee on Health, Education, Labor, and Pensions  
428 Senate Dirksen Office Building  
Washington, DC 20510

**Re: *The Every Child Achieves Act of 2015***

Dear Chairman Alexander and Ranking Member Murray:

We submit these comments on behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), the civil rights organization founded by Thurgood Marshall. While LDF applauds the Senate's bipartisan Elementary and Secondary Education Act (ESEA) reauthorization effort, the *Every Child Achieves Act of 2015*, we write to highlight our concerns about the bill in its current form. We urge the Committee to consider and address the concerns outlined herein during its markup of the bill this week.

In particular, as the organization that successfully litigated *Brown v. Board of Education* over sixty years ago, we urge the Committee to maintain the federal oversight role to ensure meaningful state accountability. This accountability should include the ability of the federal government to ensure that states are setting strong college-and-career-ready standards and providing all students with quality instruction and equitably distributing school resources, as well as ensuring that students of color and low-income students are not disproportionately taught by non-credentialed teachers. In its current form, the *Every Child Achieves Act* allows states to report on these factors—including distribution of qualified teachers and state college-and-career ready standards. However, the bill restricts the ability of the Secretary of Education to address states that fall short of these factors—it provides for federal intervention only in the case of statutory non-compliance. While reporting is important, federal oversight and strong state accountability is critical to ensuring compliance with the spirit of ESEA to provide all students with quality educational opportunities. LDF urges the Committee to revise the bill to include strong state accountability, maintain the federal oversight role, and ensure the presence of mechanisms for federal intervention and support, not sanctions, when states fall short of providing all students with quality education.

The ability of the federal government to hold states accountable for providing quality education is an overarching principle of the ESEA, which provides federal education funding to states and conditions receipt of that funding on compliance with federal law. While we understand the importance of state, local educational agency (LEA), and school autonomy in designing curricula to be responsive to the particular student population, we recognize that, when the provision of education was left to the sole discretion of states prior to passage of the ESEA, students of color, students with disabilities, and low-income students were relegated to receiving substandard instruction. Currently, nothing in the bill allows for federal intervention and support in the case of failure of a state to provide quality instruction to all students. And, in setting college-and-career ready standards, the bill contains no mechanism to ensure that a state's academic standards are rigorous enough to prepare all students for college and careers and provides for no federal intervention in the case of statutory non-compliance. While we agree that locally-developed curricula is important, in the event that the curricula falls short in preparing students for college and careers, there must be an accountability mechanism for federal oversight to ensure strong state standards and federal support to help states develop and implement such standards.

In addition, while states are allowed to report on distribution of resources, there is no mechanism to allow for federal intervention and support when states fall short of providing all LEAs with resources needed for all students to achieve. We recommend inclusion of a mechanism to allow federal intervention and support to help states that fall short of equitable resource distribution to help ensure that all students have access to the quality resources needed to succeed.

We also recommend that the Committee include provisions that meaningfully ensure that low-income students, students of color, and other students in "high need" schools are not disproportionately taught by non-credentialed teachers or teachers credentialed through alternative certification programs. We are pleased to see support for the Teacher Incentive Fund (TIF) in the bill. In addition, we urge that federal funding not only be targeted to help develop a credentialed teacher workforce, but also a diverse teacher workforce that reflects the increasing diversity of our nation's classrooms.

To help address school discipline disparities that disproportionately impact students of color, we recommend that the Committee detail that use of Title II funds for professional development can be targeted for not only classroom management training, but also training on implicit bias. Implicit bias,<sup>1</sup> fueled by race and gender stereotypes, has been found to underlie many disciplinary decisions that lead to students of color being disproportionately

---

<sup>1</sup> Implicit bias is defined as "the mental process that causes us to have negative feelings and attitudes about people based on characteristics like race, ethnicity, age, and appearance. Because this cognitive process functions in our unconscious mind, we are typically not consciously aware of the negative racial biases that we develop over the course of our lifetime. In the general population, implicit racial bias often supports the stereotypical caricature of Black youth . . . as irresponsible, dishonest, and dangerous." Tom Rudd, Kirwan Inst., *Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated* 3 (2014), available at <http://www.antiracistalliance.com/racial-disproportionality-schools-02.pdf>.

disciplined for minor offenses, such as “excessive noise,” “disrespect,” and “dress code violations.” In addition, cultural competency training can also be detailed as an allowable use of funds to address discipline disparities. We also recommend that the Committee include language, such as that contained in Senator Chris Murphy’s bill, the *Supportive School Climate Act* (S. 811), which would fund supportive programs and practices to address discipline disparities and replace overly punitive practices with positive and proven discipline best practices. We are pleased to see the inclusion of support for Positive Behavioral Interventions and Supports (PBIS) throughout the bill, but encourage the use of PBIS not only in the special education context, but for all students to help address discipline disparities. We also are pleased to see the bill’s support for school-based mental health staff and other support personnel. To ensure that discipline disparities are identified and addressed and that LEAs progress in addressing disparities is tracked, we recommend disaggregation of student data (cross-tabulated by race and gender) and annual reporting by LEAs to states of this disaggregated data, including data on school discipline indicators.

While the bill includes strong funding provisions, we recommend additions to promote transparency. We are pleased to see the bill’s maintenance of Title I funding, without portability, and retention of the Maintenance of Effort (MOE) requirement. However, to ensure accountability and transparency, we urge the Committee to require states to report to the Secretary the use of schoolwide funds, rather than allowing consolidation of these funds with no tracking or accountability of their use. We also recommend that the Committee include language providing full reporting of data, including teacher salaries, to give a more complete picture of comparability between LEAs.

We urge the Committee to consider these concerns. This bipartisan effort does many things right for our public schools students, e.g., support for early childhood education and literacy. These interventions will help to identify and address children’s needs early in the educational process so that more children can start out on even footing when they begin elementary school and can access needed support during school to improve performance in reading.

However, to ensure that all children in this country have access to and receive quality instruction, we must have meaningful accountability. We believe that maintenance of a strong federal role is critical to ensuring that states meet their responsibilities to provide all children with access to quality instruction so that all children can achieve and thrive. We look forward to the Committee’s consideration and incorporation of these recommendations and will condition our support of the bill on inclusion of these recommendations. Thank you for your consideration and please contact Janel George with any questions at [jgeorge@naacpldf.org](mailto:jgeorge@naacpldf.org).

Respectfully submitted,

Leslie Proll, Director, Washington Office  
Janel George, Senior Education Policy Counsel