

July 8, 2015

Dear Senator,

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), the civil rights law firm founded by Thurgood Marshall seventy-five years ago, I urge you act to ensure that the Senate's *Every Child Achieves Act*, S. 1177, does not diminish the important role of the federal government outlined in 1965's original Elementary and Secondary Education Act (ESEA)<sup>1</sup> to ensure that states better serve "the special educational needs of all educationally deprived children."<sup>2</sup> President Johnson envisioned ESEA as a lever out of poverty, providing federal aid to help mitigate the effects of concentrated poverty and inequitable local funding, and to open access to quality education for low-income children and children of color. Passed on the heels of the Civil Rights Act of 1964 and the U.S. Supreme Court's decision in *Brown v. Board of Education*,<sup>3</sup> the original ESEA provided states with the largest federal investment in K-12 education in history and also expanded the federal footprint to ensure state compliance with its provisions. In its current form, S. 1177 significantly diminishes this long-standing federal function of assisting states in providing access to equitable educational opportunities for all of America's children. It is that federal role envisioned in the original ESEA, one of federal aid, support, oversight, and investment, that we ask you to preserve in S. 1177.

Since ESEA's passage over four decades ago, this federal role in promoting equal educational opportunity has been recognized and preserved. Over the years, ESEA has been reauthorized six times, most recently in 2002, as the No Child Left Behind Act (NCLB). While we recognize that NCLB was deeply flawed, particularly in its prescriptive mandates and sanctions that penalized and stigmatized schools and states, we champion a federal support and oversight role that is consistent with the original purpose of ESEA—one of ensuring access to quality educational opportunities for all children regardless of race or zip code. The importance of this federal oversight role was first recognized shortly after ESEA's passage in a 1969 study

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<sup>1</sup> The Elementary and Secondary Education Act (ESEA), P.L. 89-10, is the most expansive federal funding bill for K-12 education.

<sup>2</sup> *Id.* at Section 201.

<sup>3</sup> 347 U.S. 483 (1954).

co-authored by LDF, which uncovered state and district misappropriation of ESEA funds.<sup>4</sup> The study triggered a focus in subsequent reauthorizations on targeting ESEA’s funding to those students most in need, including students living in areas of concentrated poverty.<sup>5</sup> Recognizing the importance of the federal role in protecting our nation’s most vulnerable students, Congress passed similar laws that would help enable the federal government to act to ensure and enforce opportunity for students denied and deprived of access to quality education, including young women,<sup>6</sup> children with disabilities,<sup>7</sup> and English Learners.<sup>8</sup>

S. 1177 would make the unprecedented move of stripping the federal government of its enforcement and oversight role by preventing federal intervention if a state fails to provide quality educational opportunities on an equitable basis. Yielding to political gamesmanship, S. 1177 turns its back on marginalized children and reneges on the federal commitment to ensure that states provide educational opportunity for the most disadvantaged children. Instead, the bill eliminates federal authority to disapprove of state plans or waivers except for the most egregious violations of law. The bill also eliminates any federal mechanisms requiring states to act to address persistent educational disparities or inequities. Without requiring state action to remedy disparities impacting the most vulnerable children, ESEA is rendered ineffectual and irrelevant. Clothing inaction in the rhetoric of “state flexibility” only harms the very children who have historically been relegated to inferior and sub-standard instruction by states. Fundamentally, the bill disarms the federal government’s ability to hold states accountable to ensure the provision of quality educational opportunities for all students—undermining the very intent of ESEA, and all attendant bills promoting federal enforcement of equal educational opportunity.

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<sup>4</sup>*Title I of ESEA: Is It Helping Poor Children?*, report by the NAACP Legal Defense and Educational Fund, Inc. and the Washington Research Project, December 1969, available at <http://files.eric.ed.gov/fulltext/ED036600.pdf>. The report found that funds were being used to decorate superintendents’ offices and train African American girls to serve as domestic workers.

<sup>5</sup> *Id.*

<sup>6</sup> Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

<sup>7</sup> Individuals with Disabilities Education Act (IDEA), P.L. 101-476.

<sup>8</sup> Protections for English Learners (ELs) have been recognized under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

We believe that the heart of ESEA—the federal aid, oversight, and enforcement role—must be preserved in order for the law to effectuate its purpose. Now is not the time to strip away this historic federal role or play politics with the future of our nation’s children. We must use the opportunity of ESEA reauthorization to chart a course for educational access, student achievement, and economic prosperity for all of our nation’s children.

Sincerely,

A handwritten signature in black ink that reads "Sherrilyn A. Ifill". The signature is written in a cursive, flowing style.

Sherrilyn Ifill  
President & Director Counsel,