

Congress of the United States

Washington, DC 20515

November 10, 2011

The Honorable John Kline
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Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, DC 20515

The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
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Washington, DC 20515

The Honorable Tom Harkin
Chairman
Senate Committee on Health, Education,
Labor & Pensions
428 Senate Dirksen Office Building
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The Honorable Michael B. Enzi
Ranking Member
Senate Committee on Health, Education,
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The Honorable Duncan D. Hunter
Chairman
Subcommittee on Early Childhood,
Elementary, and Secondary Education
Committee on Education and the Workforce
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The Honorable Dale E. Kildee
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The Honorable Jeff Bingaman
U.S. Senator
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The Honorable Lamar Alexander
U.S. Senator
455 Senate Dirksen Office Building
Washington, DC 20510

Dear Chairman Kline, Ranking Member Miller, Chairman Harkin, Ranking Member Enzi, Chairman Hunter, Ranking Member Kildee, Senator Bingaman, and Senator Alexander:

Thank you for your continued leadership on elementary and secondary education. As both chambers of Congress advance reauthorization of the *Elementary and Secondary Education Act (ESEA)*, the Congressional Black Caucus, the Congressional Hispanic Caucus and the Congressional Asian Pacific American Caucus write to share our serious concern that current reauthorization proposals, including those passed out of the House Committee on Education and the Workforce and the Senate Committee on Health, Education, Labor, and Pensions, fail to provide sufficient opportunities and protections for children of color, students learning English as a second language, and students with disabilities.

There is growing consensus that *ESEA*, as amended by the *No Child Left Behind Act* in 2002, is far from perfect. Unfortunately, largely absent in current reauthorization deliberations is the

original intent of *ESEA* - from initial inception through the most recent reauthorization, *ESEA* was and continues to be a civil rights law. Congress designed the law to achieve educational equity for low-income students, who were disproportionately students of color, after decades of neglect by the states. Congress amended the statute several times as new student populations and their educational needs emerged. *ESEA* has slowly pushed for equity in our public education system by working to ensure that resources are focused on child populations that have historically been underserved by our nation's schools, including: children of color, children in poverty and children with disabilities.

Unfortunately, more than 50 years since the Supreme Court decided *Brown v. Board of Education* and over 40 years since the enactment of *ESEA*, severe inequities in education continue to exist. Recent data demonstrate all too clearly that there remain wide achievement gaps based on income, race, ethnicity, gender, disability, and English language status within seemingly high-performing schools and between high- and low-performing schools. Far too many young people of color still enter high school and college unprepared; the gaps separating the achievement of White students from African American, Hispanic, Native American, some Asian American students, students learning English as a second language and students with disabilities remain glaring. In addition, America continues to face a high school dropout crisis, which disproportionately affects communities of color. Further, the recently released data by the Office of Civil Rights clearly demonstrate that students of color lack access to many educational opportunities, including the following:

- only 2 percent of students with disabilities take at least one Advanced Placement class;
- despite the “model minority” myth for Asian Americans, only 41% of Chinese American, 27% of Vietnamese American and 15% of Native Hawaiian students are college ready in California;
- schools serving mostly African American students are twice as likely to have teachers with one or two years of experience than are schools within the same district that serve mostly White students; and
- students with limited English proficiency make up 6 percent of the high school population (in grades 9-12), but are 15 percent of the students for whom algebra is the highest-level math course taken by the final year of their high school career.

Unfortunately, the promise of equal access to education has not yet been realized, and *ESEA* reauthorization ought to seek to reduce these disparities and ensure that all children have access to a high quality education. While states remain the primary funders of education, history has demonstrated that federal accountability for educating all students is a necessary moral compass to ensure equity for students of color and disadvantaged students that historically have not been – and currently are not being – met.

Consider the 1994 reauthorization of *ESEA* when Congress opted to allow states to set their own improvement targets for schools and districts so long as they resulted in “continuous and substantial improvement.” Under the 1994 “continuous and substantial improvement approach” – a more ambitious standard than the current Senate bill’s “continuous improvement” frame – 17 states established no statewide accountability system, only 2 states factored in subgroup disparities in their accountability system, and the statewide accountability systems across the

country varied widely. Under the 1994 approach, a student's zip code defined the educational expectations held for them.

The 2002 reauthorization of *ESEA* was seminal in both instituting ambitious accountability and clear data requirements related to student performance of *all* groups of students, including low-income students, students of color, students learning English as a second language, and students with disabilities. The accountability provisions within the 2002 law established the fundamental role of the federal government in setting clear performance targets for every school to educate all of its students regardless of their demographic characteristics. The law recognized that data collection on lack of student achievement is insufficient; accountability systems with clear performance targets serve as a critical tool to encourage states to set equitable goals and increase achievement for all students. These provisions are of particular importance to our caucuses and constituents because of their potential to dramatically improve educational opportunities for students of color. We recognize that changes in the 2002 accountability provisions are necessary to improve implementation of educational reforms; however, relaxing measureable achievement gains and progress targets under an approach *more lax than the 1994 law* is clearly not in the best interest of the children the law is intended to protect and benefit.

Our concerns about reducing federal accountability for students' educational success are not unfounded and the potential drawbacks are evidenced by recent history. When *The American Recovery and Reinvestment Act of 2009* increased funding for special education, state education agencies allowed local educational agencies that were not meeting the most basic standards under the *Individuals with Disabilities Education Act* to reduce their funding permanently in order to divert these dollars to general education, thereby dramatically reducing current and future investments in disability services. Rather than requiring local educational agencies that were already failing to provide basic protections for students with disabilities to use the Recovery Act dollars to improve their services for students with disabilities, states provided additional flexibility that allowed districts to reduce spending permanently on children with disabilities and to ignore problems related to how they treat children with disabilities. Federal funding should require firm, ambitious demands for higher achievement and gap closing for all students, not facilitate decisions that hinder the education of vulnerable students.

The members of our three caucuses strongly believe that the following provisions must be included in any reauthorization efforts to ensure equal educational opportunities for all students:

- **Maintain Federal Accountability for Student Achievement via Performance Targets:** In addition to the disaggregation of student achievement data, the great success of NCLB was codifying, for the first time, the expectation that all students can learn. By requiring all schools to help all students, regardless of background, meet grade level standards, that law took a significant step to protect the civil rights of all students. To that end, *ESEA* reauthorization must continue federal accountability for all students' achievement via performance targets for overall performance, student growth, and graduation.
- **Enhance Disaggregation of Data:** In order to ensure that all students are prepared and that schools are meeting their responsibility to students, transparency provisions should be strengthened to provide key data to help improve students' academic success, including: data collection and disaggregation by ancestry for major racial and ethnic groups and progress in

learning English and mastering academic course content; and cross-tabulation of all categories by gender. Policymakers cannot craft appropriate interventions to ensure success for all students without understanding the success of these groups of students.

- ***Disaggregate Data by Ancestry and English Language Proficiency.*** Unfortunately, disaggregated data is not collected for the Asian American, Native Hawaiian and Pacific Islander (AANHPI) community nor for groups of students based on their English proficiency. Aggregated data currently collected by schools and states falsely show that the AANHPI community is performing at or above their White counterparts although there is mounting evidence that there are significant achievement gaps within the AANHPI population. Without broken down data collection on AANHPI subgroups, these and other educational problems remain invisible to parents, teachers, school districts, and states. Importantly, a focus on achievement gap schools or on graduate rates would likely never identify schools that have gaps within the AANHPI community. Similarly, how a state or school should approach the educational needs of a recently arrived student learning English as a second language varies from how it would handle a student who has mastered English as a second language. Moreover, states and schools deserve credit for educational accomplishments such as achieving English as a second language mastery for students. Without additional data, these needs and successes are masked. Failing to include language for further disaggregated data for AANHPI, Hispanic, and English Language Learner subgroups would allow *ESEA* to continue to mask the challenges faced by these communities.
- ***Cross Tabulate Demographic Categories by Gender.*** Understanding the interaction of gender with race/ethnicity and other demographic characteristics is critical to understanding student success. For example, there is a gender gap in national high school graduation rates, with 72 percent of female students graduating compared to 65 percent of males. This gap is especially large among students of color. Only 48 percent of African American young men graduate high school, whereas 59 percent of African American young women graduate. Among Latino students, 58 percent of young women graduate compared to 49 percent of young men. Understanding key elements of student success is necessary so that educators and lawmakers can develop interventions tailored to the students most in need.
- **Maintain Current Law's Approach to Supplement Not Supplant:** Given that *ESEA* is a civil rights law, our caucuses have long championed requirements that federal dollars supplement, not supplant, state education efforts, both within Title I and Title III. Given that the purposes of Title I and Title III are to provide additional financial assistance to states and school districts to meet the needs of educating economically-disadvantaged children and students learning English as a second language, respectively, allowing the waiver or loosening of these requirements would undermine the fundamental purpose of this funding. Further, any prohibition on use of funds that incentivizes states and localities to fight federal civil rights oversight with Title III funds would undermine independent obligations under Title VI of the *Civil Rights Act of 1964*. States and districts are required to provide core language educational programs and services for students learning English as a second language growing out of *independent* obligations under Title VI of the *Civil Rights Act of 1964*, its implementing regulations as shaped by *Lau v. Nichols* and its progeny, *the Equal*

Educational Opportunity Act of 1974, and other federal, state, and local laws. Title III should not be a slush fund for these independent obligations. Without current law's approach to supplement not supplant, the overall inputs going into education for low-income students and those learning English as a second language will be narrowed and *ESEA's* modern focus on the educational outputs of these students will be significantly weakened.

- **Ensure Educational Opportunities for English Language Learners:** There are multiple provisions of *ESEA* that we believe are vital to ensuring equal educational opportunities for students learning English as a second language.
 - ***Increase the Title III Authorization Level.*** English Language Learners play a significant role in our overall national educational outlook. At the time of the 2002 reauthorization, 9 percent of students in the United States were learning English as a second language. The *No Child Left Behind Act* set the Title III authorization level at \$750,000,000. Today, however, 1 in 10 students in the country are English Language Learners. Yet, the appropriation for these students hovers at \$733,531,000. The need is greater now than a decade ago and yet the federal funds are increasingly spread further. For this reason, an increase in the authorization level is needed to reflect the exponential growth of the English as a second language population.
 - ***Contain Measurable Progress Targets.*** Annual measurable achievement objectives for English Language Learners (*i.e.*, those covering yearly student progress in learning English, in attaining English proficiency, and in mastering academic content) are critical performance targets to ensure educational success for students learning English as a second language. Federal dollars should require clear, objective performance measures for students learning English as a second language and concrete targets for schools in educating these students. An amorphous requirement for “continuous improvement” would fail to reflect sufficient expectation that all students succeed. Expectations for success should be universal and not contingent upon whether English is your first or second language.
 - ***Maintain Current Approach to Teacher English Fluency.*** *ESEA* Section 3116(c) concerns English as a second language teacher fluency and fosters certifications that teachers working with students learning English as a second language “are fluent *in English and any other language* used for instruction.” Maintaining fluency in two languages is critical to accommodate states and localities that have adopted innovative language support programs, including: (1) structured immersion, whereby an English Language Learner’s primary language is used to clarify instruction; (2) transitional bilingual education, allowing some use of instruction in an English Language Learner’s primary language; and (3) dual language or two-way bilingual programs, using instruction and developing skills in English and a second language. Proposals that would require only that teachers working with English Language Learners be “fluent *in the language* used for instruction” risks imposing significant adverse impacts on instruction and creating confusion in states and localities that have adopted the above methods of instruction. Retaining the current law’s approach is preferable.

- ***Protect Parental Notice Provisions.*** *ESEA's* Section 3302 currently requires Title III recipients to provide parents of students learning English as a second language a separate notice of a local educational agency's failure to make progress with annual measurable achievement objectives. Whatever the benchmark of progress under the reauthorized law, parents deserve written notice when the language method of instruction falters or fails their child. Because these students may be receiving separate instruction, it is important that parents have information about the progress of students learning English as a second language, in addition to the progress of all students. Section 3302 must retain separate notice to parents when progress targets are not met.

- ***Alignment of Content and Language Proficiency Standards.*** Students learning English as a second language face two trajectories to educational success: (1) mastering English as a second language, and at the same time (2) mastering academic content. States and schools have yet to adopt workable diagnostic and summative assessments that measure an English Language Learner's baseline upon entering a district and eventually progress in listening, speaking, reading, and writing English. Moreover, such progress assessments must be aligned to content standards, so states and schools can attend to the linguistic *and* academic needs of students learning English as a second language. *ESEA* must be reauthorized to require the adoption of valid and reliable diagnostic and summative assessments instruments linked to content standards, that incorporate multiple measures to trigger (re)designation (i.e., home language survey, other test scores, student interview) of a student learning English as a second language.

- ***Commission on Assessment of English Learners.*** *ESEA* reauthorization should create a new independent commission on assessments for students learning English as a second language, an implementation issue that states have struggled with over the last decade. The composition of the commission must include individuals with expertise in: (1) the art of teaching English to speakers of languages other than English; (2) the art of teaching language development and language acquisition to *all* students; (3) measurement and educational assessments systems; and (4) educational assessments and accountability practices. The commission should assist the Department of Education in addressing the range of issues part and parcel of educating English Language Learners in academic content *and* language acquisition.

- **Maintain Requirements on Equity in Teacher Distribution:** Teacher effectiveness is the most significant in-school factor driving student achievement. To promote equity in teacher distribution, the 2002 law required the State educational agency to "...ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers..." Recent studies clearly demonstrate the continued need for strong teacher equity provisions. For example, the recently released data from the Office of Civil Rights show that schools serving mostly African American students are twice as likely to have teachers with only one or two years of experience than are schools within the same district that serve mostly White students. Also, schools serving higher concentrations of African American and Latino students spend less on teacher salaries than do schools serving more White students. While salary does not necessarily correlate with teacher effectiveness, there is clear evidence that personnel resources are not being fairly allocated. In addition, both the Education Trust and the Citizens' Commission on Civil

Rights released reports in 2006 demonstrating large discrepancies between the qualifications of teachers in high-poverty, high-minority schools and teachers serving in schools with a low poverty/minority student population. For example, one third of classes in high minority schools are taught by out-of-field teachers. In California, almost 1 in 5 teachers in high poverty schools are uncertified, twice the rate of teachers in other schools. Congress recently underscored the importance of these provisions within P.L. 111-16, the *American Recovery and Reinvestment Act*, requiring states to comply with the *ESEA* teacher equity provisions. The gross disparities in access to effective teachers continue; statutory requirements to examine and address them remain necessary. Further, we strongly urge the authorizing committees to strengthen the current equity provisions in order to examine and address the distribution of excellent teachers.

- **Include Performance Targets for Graduation Rates:** Although the 2002 law set a goal of 100 percent proficiency in reading and math by 2014, the law did not establish a consistent, final graduation rate goal or set corresponding, meaningful, annual growth targets for graduation rates. This deficiency in federal policy permitted the use of inconsistent and misleading graduation rate calculations that overestimated the number of graduating students, failed to require meaningful increases in graduation rates over time, and did not require the graduation rates of different categories of students to increase as part of Adequate Yearly Progress determinations. As a result, most states do not require schools and districts to improve graduation rates by any significant amount. Only a few states set a final graduation rate goal of 100 percent, some states set goals as low as 50 percent, and some states permit high schools to meet Adequate Yearly Progress by making as little as 0.1 percent improvement or less in graduation rates each year. To begin to address this deficiency, the Department of Education issued regulations in 2008 that created a uniform high school graduation rate calculation, ensured that improving graduation rates for all students was part of the federal accountability system, and required states to set graduation rate goals and targets. Although the regulations are a laudable step in the right direction, there remain areas of concern, including that the regulations do not go far enough in setting clear, consistent, and high graduation rate goals with aggressive and attainable graduation rate growth targets; these policy goals can only be achieved through legislative action. The Tri-Caucus therefore maintains that any *ESEA* reauthorization must include more rigorous high school graduation and dropout prevention provisions that create a high school graduation rate calculation that is consistent across states, require reporting of graduation rates for different categories of students, set meaningful graduation rate goals and targets, and remove incentives for schools to push out low-performing and at-risk students.
- **Ensure Full and Equitable Funding for the U.S. Territories:** *ESEA* reauthorization needs to address several funding disparities that limit the federal assistance provided to students residing in the U.S. territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands. First, to foster equity and create opportunity for all students, funding for the territories should not be subject to caps and set-asides in Title I, Title III and other titles, which arbitrarily reduce the amount of funding these jurisdictions receive. Further, reform should expand the federal Impact Aid program to reimburse schools for the costs of educating students from the Freely Associated States who reside in the territories or other parts of the United States.

Given our resolute commitment to the civil rights tenets of *ESEA*, we cannot support a reauthorization that diminishes equal access to education for all students. A balance between federal accountability and state flexibility while protecting the educational rights of children of color is possible, as evidenced by the waiver proposal offered by the Department of Education. The waiver process would continue to require states to provide a quality education for all students regardless of background, measure progress of student growth through math and reading tests instead of Adequate Yearly Progress, and set goals for closing achievement gaps, yet it would also provide flexibility for locally-driven control on the specific nature of the reforms. We hope that any efforts by Congress to reauthorize *ESEA* would attempt to strike the same delicate balance.

The Congressional Black Caucus, Congressional Hispanic Caucus, and Congressional Asian Pacific American Caucus urge you to include the provisions outlined in this letter in any reauthorization of *ESEA*. We look forward to working with you on this task, and we thank you for your consideration.

Sincerely,



Emanuel Cleaver

Chair

Congressional Black Caucus



Judy Chu

Chair

Congressional Asian Pacific American Caucus



Charles A. Gonzalez

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Danny K. Davis

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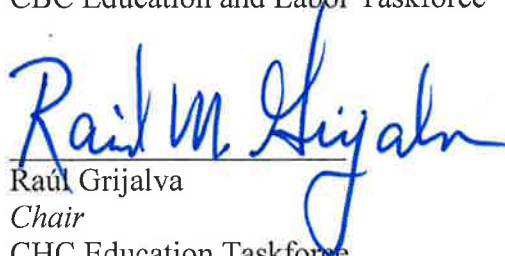
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