

February 6, 2015

Committee on Health, Education, Labor and Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

Re: Proposed Reauthorization of the Elementary and Secondary Education Act

Dear Senators on the Health, Education, Labor and Pensions Committee:

We are writing on behalf of the National Coalition on School Diversity (www.school-diversity.org) to offer comments on Senator Alexander's proposed reauthorization of the Elementary and Secondary Education Act. In particular, we urge the Committee to consider strengthening the ESEA's emphasis on the value of school diversity. Reduction of racial and economic isolation in the public schools can have powerful positive effects on student achievement and a wide range of educational outcomes.¹ And as you know, five Justices of the Supreme Court, in the 2007 *Parents Involved in Community Schools* decision, agreed that school diversity and the reduction of racial isolation are "compelling government interests" worthy of protection.² Congress should also recognize these values in its reauthorization of the ESEA.

We support efforts for a long-overdue update to the current No Child Left Behind legislation, which was enacted in 2002. However, the proposed bill contains provisions potentially undermining efforts to create and sustain racially and economically diverse schools and classrooms, including the elimination of the School Improvement Grant program and proposed alterations to the distribution of Title I funds. In addition to these concerns we have provided an appendix containing specific amendments to Senator Alexander's proposed bill that would support greater diversity in schools.

It is premature to eliminate the School Improvement Grant program (SIG). While SIG has not been particularly effective in increasing student performance, the lackluster results are likely due to the program's relative inflexibility. By only allowing SIG recipients to implement the approaches described in the Turnaround Model, Restart Model, School Closure Model, or Transformation Model, the impact of SIG funds was significantly diminished. Essentially schools were limited to altering the composition of the staff, changing management structures, or closing and sending students to nearby schools which were more often than not similarly

¹ See, e.g., Rucker C. Johnson, Long-Run Impacts of School Desegregation & School Quality on Adult Attainments, National Bureau of Economic Research Working Paper 16664, 2-3 (Jan. 2011, rev. May 2014), available at <http://www.nber.org/papers/w16664>, Douglas Harris, Ctr. for Am. Progress, Lost Learning, Forgotten Promises: A National Analysis of School Racial Segregation, Student Achievement, and "Controlled Choice" Plans (Nov. 11, 2006), available at <http://cdn.americanprogress.org/wp-content/uploads/issues/2006/11/pdf/lostlearning.pdf>, and the other references cited below.

² See *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 782 (2007) (Kennedy, J., concurring); *id.* at 803 (Breyer, J., dissenting).

underfunded and low-performing. These options precluded significant changes to reduce school poverty concentration and racial isolation, which decades of research indicate is an important factor in student learning.³

However, recent developments in how the SIG funds can be used have created a space for States and civil society to encourage experimentation and engagement with alternate interventions.⁴ For example, New York State recently implemented a pilot socioeconomic integration program using SIG funds.⁵ The National Coalition on School Diversity has also recommended a magnet school approach for the SIG program.⁶ An extensive body of research indicates the racial and socioeconomic composition of the student body has a significant impact on student outcomes.⁷ It would be premature to withdraw SIG funding before allowing other states to implement innovative programs like New York's and evaluating the results.

Title I funds should not follow the student. Research indicates that unfettered school choice programs lead to greater segregation by race and income than would occur if students were assigned based on geography,⁸ which would result in worse outcomes for underserved students.⁹

³ "Does Segregation Still Matter? The Impact of Student Composition on Academic Achievement in High School," Russell W. Rumberger and Gregory J. Palardy, 107 *Teachers College Record* 9 (2005) at 2020, available at <http://education.ucr.edu/pdf/faculty/palardy/Palardy5.pdf> ("In our study, all students whatever their race, social class, or academic background who attended high schools with other students from high social class backgrounds learned more, on average, than students who attended high schools with other students from low social class backgrounds."); Coleman et al., 1966, p. 32 ("The social composition of the student body is more highly related to achievement, independent of the student's own social background, than is any school factor.")

⁴ 79 Fed. Reg. 53253, 53257 (September 8, 2014)

⁵ See "NYS Schools to Receive Grants to Promote Socioeconomic Integration," New York State Department of Education, December 30, 2014, available at <http://www.nysed.gov/news/2015/nys-schools-receive-grants-promote-socioeconomic-integration>.

⁶ See "Proposal for a Whole-School Magnet Reform Strategy in the School Improvement Grants program" (NCSD, October 2014) available at www.school-diversity.org/pdf/NCSD_SIG_Proposal_withcoverletter_10-31-14.pdf.

⁷ Racially and socioeconomically integrated schools have higher rates of graduation than high-poverty, segregated schools. See "Who Graduates? Who Doesn't?: A Statistical Portrait of Public High School Graduation, Class of 2001," Christopher B. Swanson, Education Policy Center and The Urban Institute, at 35, available at http://www.urban.org/UploadedPDF/410934_WhoGraduates.pdf, ("there is a strong and very detrimental linkage between graduation rates and the environmental conditions that go along with factors like poverty and segregation."); Brief of 553 Social Scientists as Amici Curiae in Support of Respondents, Parents Involved in Community Schools v. Seattle School Dist. No. 1, 127 S. Ct. 2738 (2007), at App. 39, ("An examination of over 13,000 public high schools across the country in 2004 showed that schools with a higher concentration of blacks and Latinos tend to have lower "promoting power," which indicates the percentage of students who stay in school and are promoted each year from grades 9 to 12.") citing Robert Balfanz and Thomas C. West, "Racial Isolation and High School Promoting Power," in *Graduation Gap Policy Brief* (Baltimore: Center for Social Organization of Schools, Johns Hopkins University, 2006). See also Robert Balfanz & Thomas C. West, "Racial Isolation and High School Promoting Power," *Graduation Gap Policy Brief*, CENTER FOR SOCIAL ORGANIZATION OF SCHOOLS, Johns Hopkins Univ. (2006). 8; Jonathan Guryan, *Desegregation and Black Dropout Rates*, AM. ECON. REV. 94, no. 4 (2004), at 919-43. Racially integrated schools result in better reading scores. See "The Race Gap in High School Reading Achievement: Why School Racial Composition Still Matters," Shelly Brown-Jeffy, (2006), 13 *Race, Gender & Class* 3/4, pp. 268-294, at 290 available at <http://www.jstor.org/stable/41675185>; For a comprehensive survey of recent research, see the website of the National Coalition on School Diversity: <http://school-diversity.org>; see also NY Appleseed, "KEY RESEARCH HIGHLIGHTS: HOW DIVERSITY PROMOTES BETTER EDUCATIONAL OUTCOMES," available at <https://www.appleseednetwork.org/promoting-diversity-in-new-york-city-schools/>.

⁸ Public School Choice and Integration Evidence from Durham, North Carolina Robert Bifulco, Helen F. Ladd, and Stephen Ross, available at <http://files.eric.ed.gov/fulltext/ED509668.pdf>

⁹ *Supra* note 5

Furthermore, allowing Title I funds to follow the child without including any mechanism to steer low-income students to lower poverty schools, and with no transportation backing, also suggests greater racial and socioeconomic isolation for students would be an outcome. Allowing Title I funds to follow the student would likely result in more advantaged students leaving public schools for charters, resulting in greater concentrations of English Language Learners, Students With Disabilities, and very low income students in public schools with decreased funding. Finally, allowing Title I funds to follow the students appears to be a stepping-stone toward creating a voucher program, which we strongly oppose.

Title I should be used to deconcentrate school-based poverty and provide students a real alternative to underperforming schools. While the current reauthorization draft indicates LEAs must “provide all students enrolled in the identified [consistently underperforming] school with the option to transfer to another public school served by the local educational agency, unless such an option is prohibited by State law,”¹⁰ this right-to-transfer provision must be strengthened and extended to interdistrict transfers to be effective in practice. Given the local nature of school funding it is likely that students at a consistently underperforming school will not have high-performing, well resourced public schools within their district. While resource inequities certainly exist between schools in the same district, research shows that resource disparities between districts remain a formidable problem,¹¹ the majority of racial and ethnic segregation occurs between rather than within districts, and socioeconomic segregation between districts is on the rise.¹² Research into interdistrict transfer programs also indicates interdistrict transfer policies “are far more successful than recent choice and accountability policies at closing the achievement gaps and offering meaningful school choices.”¹³

In addition to strengthening opportunity to transfer provision, specifying students must have access to high-performing schools for the right to transfer provision to be effective, whether inter- or intra-district, the ESEA reauthorization should guarantee the provision of adequate information and resources regarding the right to transfer, and various transfer options, to the families of students attending consistently underperforming schools. The reauthorization should also create a system of financial incentives and penalties related to Title I funding to encourage greater socioeconomic integration of students and a more equitable distribution of school resources, such as high-quality teachers.

We urge members of the Health, Education, Labor and Pensions committee to seriously consider our comments and suggested language. The country is in the midst of a demographic transformation, moving from a predominantly white, middle class nation to a truly multiracial

¹⁰ Every Child Ready for College or Career Act of 2015, p. 90, available at <http://www.help.senate.gov/imo/media/AEG15033.pdf>

¹¹ Baker, B. D., & Welner, K. G. (2010). “Premature celebrations: The persistence of interdistrict funding disparities” Educational Policy Analysis Archives, 18(9). Retrieved March 3, 2015, from <http://epaa.asu.edu/ojs/article/view/718>

¹² Amy Stuart Wells, Bianca J. Baldrige, Jacquelyn Duran, Courtney Grzesikowski, Richard Lofton, Allison Roda, Miya Warner and Terrenda White, “Boundary Crossing for Diversity, Equity, and Achievement: Interdistrict School Desegregation and Educational Opportunity,” Charles Hamilton Houston Institute for Race and Justice, (2009), available at http://www.charleshamiltonhouston.org/wp-content/uploads/2013/06/Wells_BoundaryCrossing.pdf

¹³ *Id.* at 1

society,¹⁴ one struggling with rising inequality,¹⁵ resegregation in its public schools,¹⁶ and a persistent achievement gap.¹⁷ The federal government must make use of every resource available in our public schools to encourage greater achievement and equity, including the diversity of our students and families,¹⁸ or we run the risk of developing a permanent underclass in a nation proclaiming to be a land of opportunity for all.¹⁹

Sincerely,

Michael Hilton
Philip Tegeler
Poverty & Race Research Action Council
Washington, DC

Janel A. George
NAACP Legal Defense and Educational Fund, Inc.
Washington, DC

Tanya Clay House
Lawyers Committee for Civil Rights Under Law
Washington, DC

¹⁴ There is now no majority race in public schools, and the share of white students is predicted to continue falling, portending a shift in the nation's demographics at large. See Lesli A. Maxwell, U.S. School Enrollment Hits Majority-Minority Milestone, Education Week, August 19, 2014, available at <http://www.edweek.org/ew/articles/2014/08/20/01demographics.h34.html>.

¹⁵ See Organisation for Economic Co-operation and Development, OECD Income Distribution Database: Gini, poverty, income, Methods and Concepts, available at <http://www.oecd.org/social/income-distribution-database.htm>. The majority of students attending public school in the United States now qualify for free or reduced price lunch. See Mokoto Rich, Percentage of Poor Students in Public Schools Rises, January 16, 2015, New York Times, available at <http://www.nytimes.com/2015/01/17/us/school-poverty-study-southern-education-foundation.html>.

¹⁶ Segregation is on the rise for black and Latino students throughout the nation. See Orfield, Gary; Kucsera, John; & Siegel-Hawley, Genevieve. (2012). E Pluribus...Separation: Deepening Double Segregation for More Students. UCLA: The Civil Rights Project / Proyecto Derechos Civiles, available at http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/mlk-national/e-pluribus...separation-deepening-double-segregation-for-more-students/orfield_epluribus_revised_omplete_2012.pdf.

¹⁷ The achievement gap between black/white and Latino/white students persists, even as testing scores rise. See Achievement Gaps: How Hispanic and White Students in Public Schools Perform in Mathematics and Reading on the National Assessment of Educational Progress, U.S. Department of Education, 2011, available at <http://nces.ed.gov/nationsreportcard/pdf/studies/2011485.pdf>; see also Achievement Gaps How Black and White Students in Public Schools Perform on the National Assessment of Educational Progress, U.S. Department of Education, 2009, available at <http://nces.ed.gov/nationsreportcard/pdf/studies/2009495.pdf>

¹⁸ Classroom diversity enhances student performance. See note 3. Increased educational attainment results in improvement related to social and economic outcomes. See Michael Hout, "Social and Economic Returns to College Education in the United States," *Annu. Rev. Sociol.* 2012. 38:379–400, available at <http://www.collegetransitions.com/wp-content/uploads/2014/05/hout-returns-to-college-education.pdf>

¹⁹ Socioeconomic mobility has not significantly changed in the United States since the 1970s, but the rise in inequality has resulted in significantly higher stakes for those at the bottom rung of the economic ladder. See Raj Chetty, Nathaniel Hendren, Patrick Kline, Emmanuel Saez, and Nicholas Turner, "Is the United States Still a Land of Opportunity? Recent Trends in Intergenerational Mobility," National Bureau of Economic Research Working Paper No. 19844, 2014, available at http://obs.rc.fas.harvard.edu/chetty/mobility_trends.pdf

Todd Mann
Magnet Schools of America
Washington, DC

Ted Shaw
University of North Carolina Center for Civil Rights
Chapel Hill, NC

Gary Orfield
Civil Rights Project/Proyecto Derechos Civiles
University of California, Los Angeles
Los Angeles, CA

Susan Eaton
Charles Hamilton Houston Institute for Race and Justice
Harvard Law School
Cambridge, MA

Sharon Davies
Kirwan Institute for the Study of Race and Ethnicity
The Ohio State University
Columbus, OH

Professor Kevin Welner*
National Education Policy Center
University of Colorado
Boulder, CO

Professor John C. Brittain*
David A. Clarke School of Law
University of the District of Columbia
Washington, DC

Genevieve Siegel-Hawley*
Virginia Commonwealth University
Richmond, VA

*University listed for identification purposes only

Appendix A: Suggested Language Alterations to the Every Child Ready for College or Career Act of 2015 (January 13, 2015 version)

SEC. 1001. PURPOSE (pp. 2-3)

Add underlined language

“...to close the achievement gap between high- and low-performing children, especially the achievement gaps between minority and nonminority children, and between disadvantaged children and their more advantaged peers by providing additional resources and supports to meet the needs of disadvantaged students, including children from low-income families and those attending high-poverty schools.”

SEC. 1111. STATE AND LOCAL REQUIREMENTS (pp. 37)

Replace 1111(c)(3) with the following

“(c) OTHER ASSURANCES.—Each State plan shall provide an assurance that—
(3) for each school year following the first year after such date of enactment, the State educational agency will provide for the equitable distribution of teachers with in local educational agencies and the State so that low-income and minority children are not taught at higher rates than other children by teachers with the lowest ratings in the State professional growth and improvement system.”

PART A - PUBLIC CHARTER SCHOOLS

SEC. 5101. PURPOSE. (p. 218)

Add underlined language

It is the purpose of this part to -

(1) provide financial assistance for the planning, program design, and initial implementation of evidence based educational methods and practices that promote diversity and increase access to high-quality public charter schools

...

(3) evaluate the impact of such schools on student achievement, the racial and social isolation of disadvantaged students, families, and communities, and share best practices among charter schools and other public schools;

...

(5) expand opportunities for children with disabilities, students who are English learners, and other traditionally underserved students to attend racially and socioeconomically diverse charter schools and meet the challenging State academic standards under section 1111(b)(1);

SEC. 5103. GRANTS TO SUPPORT HIGH-QUALITY CHARTER SCHOOLS. (p. 223)

Add underlined language

(c) STATE ENTITY USES OF FUNDS.—

(3) RULE OF CONSTRUCTION.—Nothing in this Act shall prohibit the Secretary from awarding grants to State entities, or State entities from awarding subgrants to eligible applicants, that use a weighted lottery, or an equivalent lottery mechanism, to give better chances for school admission to all or a subset of educationally disadvantaged students if—

(A) the use of a weighted lottery in favor of such students is not prohibited by State law, and such State law is consistent with the laws described in section 5110(2)(G); and

(B) such weighted lottery is not used for the purpose of, or to the effect of, creating racially or socioeconomically isolated schools which serve a particular subset of students, educationally disadvantaged or otherwise.

SEC. 5103. GRANTS TO SUPPORT HIGH-QUALITY CHARTER SCHOOLS. (p. 228)

Add underlined language

(f) APPLICATIONS.—A State entity desiring to receive a grant under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may require. The application shall include the following

(1) DESCRIPTION OF PROGRAM.—A description of the State entity’s objectives in running a quality charter school program under this section and how the objectives of the program will be carried out, including—

(A) a description of how the State entity will—

(vii) work with charter schools to promote inclusion of all students, including students from different racial, ethnic, and socioeconomic backgrounds, and support all students upon enrollment in order to promote retention of students in the school;

(viii) work with charter schools on recruitment practices, including efforts to engage racially and socioeconomically diverse groups that may otherwise have limited opportunities to attend charter schools;

(ix) share best and promising practices for promoting diversity among charter schools and other public schools;

SEC. 5103. GRANTS TO SUPPORT HIGH-QUALITY CHARTER SCHOOLS. (p. 236)

(g) SELECTION CRITERIA; PRIORITY.—

(1) SELECTION CRITERIA.—The Secretary shall award grants to State entities under this section on the basis of the quality of the applications submitted under subsection (f), after taking into consideration—

(C) the likelihood that the schools opened, replicated, or expanded by eligible applicants receiving subgrant funds will increase the academic achievement of the school’s students and progress toward becoming high-quality charter schools, as well as the probable impacts on the racial and socioeconomic composition of nearby public schools; and

SEC. 5105. NATIONAL ACTIVITIES (p. 260)

Eliminate incentive to concentrate poverty, add underlined language

(b) GRANTS FOR THE REPLICATION AND EXPAN- 4 SION OF HIGH-QUALITY CHARTER SCHOOLS.—The Secretary shall make grants, on a competitive basis, to eligible entities having applications approved under paragraph (2) to enable such entities to replicate a high-quality charter school or expand a high-quality charter school.

(4) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to eligible entities that operate or manage charter schools that, ~~in the aggregate, serve students at least 60 percent of whom are eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act.~~ commit to serving a racially and socioeconomically diverse student body.

SEC. 5107. DEFINITIONS. (p. 265)

Add underlined language

(8) HIGH-QUALITY CHARTER SCHOOL.—The term ‘high-quality charter school’ means a charter school that—

(E) has demonstrated success in creating a racially, ethnically, and socioeconomically diverse student body without increasing segregation in surrounding public schools.