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February 1, 2015

Chairman Lamar Alexander
Ranking Member Patty Murray
U.S. Senate Health, Education, Labor, and Pensions (HELP) Committee
428 Senate Dirksen Office Building
Washington, DC 20510

RE: Addressing school climate and inclusive school discipline practices in the Senate Health, Education, Labor, and Pensions (HELP) Committee's reauthorization of the Elementary and Secondary Education Act (ESEA)

Dear Chairman Alexander, Ranking Member Murray, and Committee Members:

As the Senate Committee on Health, Education, Labor, and Pensions (HELP) advances reauthorization of the Elementary and Secondary Education Act (ESEA), the members of the Dignity in Schools Campaign (DSC) urge your careful consideration and incorporation of provisions in the bill that promote positive and inclusive school climates and improve student outcomes. The DSC is a coalition of 92 organizations from 24 states, including students, parents, educators, researchers, and LGBTQ, civil rights and education organizations, dedicated to ending punitive school discipline practices that push students out of school and into the juvenile justice system. The reauthorization of ESEA presents the unparalleled opportunity to turn the tide and end long-discredited zero tolerance policies and practices in our nation's schools and support inclusive classrooms where all students can thrive.

We urge the HELP Committee to act to ensure that positive and inclusive school discipline and school climate provisions are incorporated in the ESEA to end discriminatory discipline practices that disproportionately impact students of color, students with disabilities, and LGBTQ-identifying students. While Chairman Alexander's Discussion Draft provides schools with a menu of options for using federal funding, including school-based mental health services and implementation of Schoolwide Positive Behavioral Interventions and Supports (SWPBIS), we believe that the bill should include stronger language and guidance for schools on improving school discipline practices and school climate.

ESEA is a civil rights law, enacted on the heels of the Civil Rights Act of 1964 to ensure state compliance with civil rights obligations. However, recent national data show that African American students are suspended at rates three times greater than their white peers.¹ This is despite research showing that, although African American students do not misbehave more frequently than their white peers, they are punished more severely.² In addition, students with disabilities represent only 13 percent of student enrollment nationally, but comprised one-quarter of students arrested and referred to law enforcement during the 2011-2012 school year. One in five LGBTQ students of color report being bullied.³ The data are clear that students of color, students with disabilities, and LGBTQ-identifying students are being subjected to punitive discipline practices and are suffering poor educational outcomes as a result. Urgent action is needed to reverse these troubling trends and ensure that all students have the opportunity to learn and succeed in school.

To help address discipline disparities and institute inclusive discipline practices and policies in schools nationwide, DSC recommends that the HELP Committee strengthen Chairman Alexander's Discussion Draft and incorporate the following principles in its ESEA reauthorization bill:

I. Require schools to accurately and timely report (and make publicly accessible) school discipline and school climate data, disaggregated by student subgroup. Failure to report accurate and timely data should trigger federal enforcement/intervention.

In January 2014, for the first time, the Departments of Education and Justice issued Joint Discipline Guidance putting states and districts on notice of their responsibilities to practice non-discriminatory discipline under existing federal civil rights laws.⁴ The Guidance underscored the importance of states and districts collecting and making publicly available data on discipline and school climate. Specifically, the Guidance urges schools and districts to keep records on school

¹ U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, Data Snapshot: School Discipline, *available at* <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

² Skiba, Russell, et. al, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, Policy Research Report #SRS1, June 2000, the Indiana Education Policy Center; Rudd, Tom, *Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated*, Kirwan Institute Issue Brief, Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University, February 2014.

³ Russell, S. T., Clarke, T. J., & Laub, C. (2009). Understanding School Safety and the Intersections of Race, Ethnicity, and Sexual Orientation. (California Safe Schools Coalition Research Brief No. 10). San Francisco, CA: CSSC; "Research shows that LGBTQ youth of color in particular face persistent and frequent harassment and bias-based bullying from peers and school staff as well as increased surveillance and policing, relatively greater incidents of harsh school discipline, and consistent blame for their own victimization." Burdge, Hilary, et. al, Gay-Straight Alliance Network (GSA Network), *LGBTQ Youth of Color: Discipline Disparities, School Push-out, and the School-to-Prison Pipeline*, *available at*, <http://www.gsanetwork.org/Pushout-Report>.

⁴ Department of Education, Joint Discipline Guidance, "Dear Colleague Letter on Nondiscriminatory Administration of School Discipline," *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>; Department of Education, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, *available at* <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

discipline and school climate, disaggregated by student subgroups like race/ethnicity, disability, English language learner status, and gender, to ensure compliance with Titles IV and VI of the Civil Rights Act of 1964.⁵ Currently, 18 states require some type of school discipline data collection or reporting through state statute, including Committee member states of Washington, Colorado, Louisiana, Rhode Island, Pennsylvania, and Georgia.⁶ Further, in conducting investigations under Titles IV and VI of the Civil Rights Act of 1964, the Office for Civil Rights is empowered to require data reporting on school discipline and school climate to ensure compliance with the law.⁷ We urge the Senate HELP Committee to require schools and districts to report data on school climate and school discipline disaggregated by student sub-groups to ensure that a comprehensive picture of data is collected, so that any discipline disparities can be identified and addressed. This is consistent with ESEA's goal to ensure that all students have the opportunity to learn and succeed in safe schools free of discrimination.

The *Strengthening America's Schools Act*, S. 1094, from the 113th Congress, included language that created a comprehensive and data-driven approach to improving school climate. Comprehensive data, including self-reported data from students who identify as LGBTQ, is essential to identifying and addressing discipline disparities, including harassment based upon gender identity or sexual orientation. The Committee should adopt the language of S. 1094 to ensure comprehensive data collection and reporting from schools and districts.

II. Ensure that schools and districts involve parents/caregivers and students in the development and implementation of school discipline codes. Ensure that schools prominently post and disseminate school discipline policies.

Further, we urge the Committee to incorporate provisions that will promote the engagement of parents/caregivers and students with schools in developing positive discipline practices that promote inclusive school climates. Parents/caregivers and students are the primary stakeholders in children's education and they should be involved at all stages of the development and implementation of discipline codes. Parents/caregivers and students have the best knowledge of student needs and are well-positioned to work with local educators and school leaders. Further, schools and districts should be required to prominently post and disseminate school discipline codes so that parents/caregivers and students have proper notice of discipline codes and policies. To ensure parental/caregiver involvement, the bill should require schools to draft and implement parental involvement plans and detail measures of successful implementation of such plans by outlining benchmarks measuring success.

⁵ Importance of Appropriate Record Keeping, Department of Education, Joint Discipline Guidance, "Dear Colleague Letter on Nondiscriminatory Administration of School Discipline," *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.

⁶ School Discipline Data: A Snapshot of Legislative Action, The Council of State Governments, *available at* <http://csgjusticecenter.org/wp-content/uploads/2014/03/NCSL-School-Discipline-Data-Brief.pdf>.

⁷ 20 U.S.C. 3413 (c)(1). Section 203(c)(1) Department of Education Organizing Act of 1979.

III. Target federal funding and technical assistance towards inclusive discipline best practices proven to improve student outcomes, such as restorative practices, Social and Emotional Learning (SEL) curricula, and Schoolwide Positive Behavioral Interventions and Supports (SWPBIS). Provide federal support for local community-based organizations to partner with local schools and districts to implement community-responsive and culturally appropriate discipline practices.

Research shows that exclusionary and overly punitive discipline practices, like suspensions, expulsions, and increased presence of police in schools negatively impact student achievement.⁸ Further, data show no attendant increases in school safety due to such practices.⁹ The American Academy of Pediatrics, the American Psychological Association, and the Council of State Governments, have all identified links between exclusionary discipline (like out-of-school suspensions) and lower academic achievement, higher dropout rates, and disengagement from the learning environment.¹⁰ Positive academic outcomes are, therefore, strongly linked to discipline practices that keep kids in the general classroom and engaged in learning.

We urge the Committee to include language from S. 1094, which would require states to describe in their state plans how they will act to reduce suspensions, expulsions, referrals to law enforcement, and other actions that remove students from the classroom. Like the Chairman's Discussion Draft, this language would give states the option of using Title I funds to implement Schoolwide Positive Behavioral Interventions and Supports (SWPBIS), which have been proven to foster positive school climates.¹¹ However, unlike the Chairman's Draft, more detailed descriptions of how states are progressing in reducing use of exclusionary practices are needed to confirm progress in ending discipline disparities.

IV. Provide federal funding for professional development trainings on implicit bias, cultural competency, classroom management, and alternative discipline practices, like restorative practices.

We are pleased to see that the Chairman's Discussion Draft provides, as an allowable use of funds, professional development funding for SWPBIS, and we recommend inclusion of professional development funding in the bill for training on implicit bias and how it impacts discipline referrals, as well as for training on cultural competency.

⁸ American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in Schools?*, available at <http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>.

⁹ NAACP Legal Defense and Educational Fund, Inc., et. al, *Police in Schools Are Not the Answer to the Newtown Shooting*, January 2013, available at <http://www.naacpldf.org/files/publications/Police%20in%20Schools%20are%20Not%20the%20Answer%20to%20the%20Newtown%20Shooting%20-%20Jan.%202013.pdf>.

¹⁰ *Id.*

¹¹ A school using its Title I funds for SWPBIS would be required to "implement positive, preventive approaches to school discipline to promote a positive school climate for all students and reduce recidivism of re-entering youth offenders and disconnected youth," § 1111(b)(1)(M)(iii).

Further, many existing federal funding streams are targeted towards practices proven to negatively impact student performance, such as police in schools. The Chairman's Draft gives schools the option of choosing which services to fund, such as school-based mental health services. We agree that local communities are best suited to know which programs and interventions are best suited for their schools and districts, however, we suggest that the bill stipulate that no additional federal funds will go towards practices shown to negatively impact student outcomes, like police in schools.

In addition, most existing federal funding opportunities are targeted towards partnerships between local educational agencies (LEAs) and institutions of higher education. Many local community-based organizations may not be allied with research institutions or have grant-writing capacity. Therefore, the bill should provide funding for partnerships between LEAs and community-based organizations, without requiring institutional affiliation.

V. Ensure that all publicly-funded schools, including charters, comply with civil rights and anti-discrimination laws and implement non-discriminatory discipline practices.

For too long, publicly-funded charter schools have not been held accountable for discriminatory discipline practices. This fall, DSC released *Accountability Guidelines on School Pushout and Charter Schools*,¹² calling for action to end systemic and structural issues contributing to school pushout in public charter schools. In particular, lack of oversight over charters for discriminatory practices has led to high discipline disparities impacting students of color. For instance, in Massachusetts, among schools with the highest rates of out-of-school suspensions, four out of five of the top suspending schools are public charter schools. In May 2014, the Department of Education issued Guidance on Charter Schools also requiring compliance with federal civil rights laws.¹³ DSC believes that all publicly-funded schools should adhere to federal civil rights laws and ensure that no students are subjected to discriminatory discipline practices. This also means ensuring that all students are afforded due process during disciplinary proceedings with parental notice.

Conclusion

The reauthorization of ESEA presents the unique opportunity to take action to ensure that all students, regardless of race/ethnicity, socioeconomic status, gender, disability status, or LGBTQ status, have equal opportunity to learn and succeed in school. The data are clear, our public schools are failing students of color, students with disabilities, and low-income students. It is time to make the ESEA a weapon in the 'War on Poverty,' as it was intended to be---to level the playing field for all students with equitable resource distribution, quality teacher preparation and professional development opportunities, and positive and inclusive school climates and school

¹² *Accountability Guidelines on School Pushout and Charter Schools*, available at http://www.dignityinschools.org/sites/default/files/DSC_Charter_Accountability_Guidelines.pdf.

¹³ U.S. Department of Education, Office for Civil Rights, Dear Colleague, *Obligations of Charter Schools to Comply with Federal Civil Rights Laws*, May 14, 2014, available at <http://www.ed.gov/news/press-releases/us-department-education-issues-guidance-obligations-charter-schools-comply-feder>.

discipline practices. We have the evidence of what works, now it is time to target federal funding towards proven strategies, like SWPBIS and Social and Emotional Learning (SEL) curricula.

DSC is committed to the vision of a fully functional, accountable, and successful public school system that protects every student's human right to a quality education and to be treated with dignity. We look forward to working with Congress, through a thoughtful, deliberative, bipartisan and inclusive reauthorization process, to realize the promise envisioned in ESEA and to ensure that all students have the opportunity to learn and succeed. Thank you for your consideration of our recommendations and for the opportunity to comment.

Sincerely,

The Dignity in Schools Campaign
(www.dignityinschools.org)