

# **Framework for Providing All Students an Opportunity to Learn through Reauthorization of the Elementary and Secondary Education Act**

Lawyers Committee for Civil Rights under Law  
National Association for the Advancement of Colored People (NAACP)  
NAACP Legal Defense and Educational Fund, Inc.  
National Council for Educating Black Children  
National Urban League  
Rainbow PUSH Coalition  
Schott Foundation for Public Education

Today there is nothing short of a state of emergency in the delivery of education to our nation's communities of color. As our communities quickly grow on pace to become a numerical majority, it is clear that confronting the issues we face is not just our challenge alone but all of America's challenge. As a nation, we are failing to provide the high-quality educational opportunities that are critical for all students to succeed, thereby jeopardizing our nation's ability to continue to be a world leader.

As a community of civil rights organizations, we believe that access to a high-quality education is a fundamental civil right. The federal government's role is to protect and promote that civil right by creating and supporting a fair and substantive opportunity to learn for all students, regardless of where and to whom they were born. This objective is advanced by many components of the proposed FY 2011 education budget and the *Blueprint for Reform* setting forth the Administration's priorities for reauthorization of the Elementary and Secondary Education Act (ESEA). For instance, we applaud the Administration's goal for the United States to become a global leader in post-secondary education attainment by 2020 and its efforts to develop specific strategies for turning around low-performing schools.

While there are numerous positive aspects of the Administration's education agenda, more comprehensive reforms are necessary to build a future where equitable educational opportunity is the rule, not the exception. As civil rights organizations, it is our responsibility to seek to close and ultimately eliminate the opportunity and achievement gaps experienced by communities of color. To this end, we outline six major principles that we will collectively advocate to strengthen the ESEA and ensure that the federal government provides the support necessary to protect every child's civil right to a high-quality education:

- 1. Equitable opportunities for all;**
- 2. Utilization of systematically proven and effective educational methods;**
- 3. Public and community engagement in education reforms;**
- 4. Safe and educationally sound learning environments;**
- 5. Diverse learning environments; and**
- 6. Comprehensive and substantive accountability systems to maintain equitable opportunities and high outcomes.**

The comments that follow offer critiques of federal efforts that would: distribute resources by competition in the midst of a severe recession; advance experimental proposals dwarfed by the scope of the challenges in low-income communities; and promote ineffective approaches for turning around low-performing schools and education systems.

But, more importantly, we also offer specific recommendations to implement the principles outlined above. We advance proposals to leverage federal resources available to all states in order to create the preconditions to achieve equitable opportunities for all. As a part of extending an opportunity to learn as a civil right, we call for: “universal” early education for all students in all states; policies that will provide access to highly effective teachers for all students, including incentives to recruit and retain well-prepared, highly effective teachers in high-need, low-income, and rural areas; and community schools that offer wraparound services and strong, engaging instruction with adequate supports. We urge the federal government to institutionalize a federal resource accountability system so that students, parents, and teachers will have the school and community resources necessary for students to achieve high standards, regardless of where they live.

In recent weeks, we have engaged officials within the Administration to advance these ideas, and have begun to engage Congressional leaders, as well. In the coming months, we will hold discussions in communities across the country to amplify and augment the key prescriptions outlined here.

## 1. **EQUITABLE OPPORTUNITIES FOR ALL**

As a result of our history and changing demographics, our nation is at a point where we will remain globally competitive only through achieving educational equity. We are therefore cautiously optimistic about the Administration’s call for the adoption of common college- and career-ready standards as well as the efforts of the National Governors Association and the Council of Chief State School Officers on this issue. Yet we have withheld our full endorsement of these measures because the federal government has not yet committed to delivering the resource platform to support all states and communities to meet high outcome standards.

We believe that the age of establishing outcome standards without making input investments to achieve these outcomes must end. To this end, we offer the following recommendations for federal action to provide equitable opportunities for all:

### **Recommendation 1A: Adopt *Common Resource Opportunity Standards* to Complement the Emerging Common Student Outcome Standards.**

We propose that the federal government adopt *Common Resource Opportunity Standards*, which would support the states’ common student outcome standards movement by ensuring sufficient resources to address extreme state budget cuts and interstate inequities. These standards would include national benchmarks for the following resources: (i) high-quality, early childhood education; (ii) highly effective teachers; (iii) a broad, college-bound curriculum that will prepare all students to participate effectively in our democracy; and (iv) equitable instructional resources.<sup>1</sup> As a condition for receiving federal funds under the ESEA, each state would be required to submit a plan for closing opportunity gaps in these areas and ensuring that all students

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<sup>1</sup>An outline of *Common Resource Opportunity Standards* was presented to Secretary Arne Duncan by several organizations on November 4, 2009.

have access to these core resources. As envisioned in the now pending Student Bill of Rights Act, H.R. 2451, federal funding should be tied to each state's demonstrated progress toward equitable access to these education resources.

The federal government should also require that states make progress in achieving resource equity for their schools. It should do so by enforcing existing requirements for comparability in the funding provided to high- and low-poverty schools and close the loopholes in those comparability requirements by incorporating into the ESEA the provisions of the now pending ESEA Fiscal Fairness Act, H.R. 5071.

In addition, comprehensive accountability systems are a necessity to gauge the effective implementation of the common input and output standards and ensure all students are able to achieve high outcomes. Independent audits of state and district education expenditures should be required whenever students from historically disadvantaged subgroups persistently fail to meet, or fail to make reasonable progress towards, college- and career-bound outcome standards.

In a recent speech at the NAACP's annual convention, U.S. Secretary of Education Arne Duncan embraced this push towards resource accountability. As part of the ESEA reauthorization, Secretary Duncan stated that the federal government "will require much greater transparency and action steps to address inequities in funding systems, to ensure low-income students and the schools they attend get their fair share of dollars."<sup>2</sup> In our view, resource equity must go beyond just dollars to ensure, at a minimum, that all students have access to early childhood education, highly effective teachers, college-preparatory curricula, and equitable instructional resources.

**Recommendation 1B: Shift the Focus from Competitive Grants for a Few States to Incentives for All States to Embrace Systemic Reform.**

Despite the critical need for *Common Resource Opportunity Standards*, the Administration's proposed FY 2011 budget directs the bulk of its increases in education spending to be distributed as competitive grants, while formula dollars, which have been historically underfunded, remain flat.<sup>3</sup> Because only a few states will receive competitive grants, most children in most states will experience a real decrease in federal support when inflation and state and local budget cuts are taken into consideration. We are concerned that the Administration's *Blueprint* suggests that ESEA reauthorization will continue this approach. Instead, we call for a shift of focus from competitive grant programs to conditional incentive grants that can be made available to *all* states, provided they adopt systemic, proven strategies for providing all students with an opportunity to learn.

If education is a civil right, children in "winning" states should not be the only ones who have the opportunity to learn in high-quality environments. Such an approach reinstates the antiquated and highly politicized frame for distributing federal support to states that civil rights organizations fought to remove in 1965. With the creation of the ESEA as a part of President Lyndon B. Johnson's War on Poverty, the federal government took the first steps toward requiring an equitable distribution of funding among states. Shifting the emphasis from competitive grants to conditional incentives can preserve those gains. Incentivizing behavior through limited

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<sup>2</sup>Secretary Arne Duncan, Equity and Education Reform: Remarks at the Annual Meeting of the National Association for the Advancement of Colored People, Kansas City, Missouri, July 14, 2010.

<sup>3</sup>President's FY 2011 Budget Request.

competition, in and of itself, is not a bad strategy, but we must go further to recognize that many states and districts in our union will not compete, either because they do not have the capacity or because they lack the political will. This increases the likelihood that better-resourced states and communities will win out. For these reasons, a competitive framework does not go far enough to ensure equity.

The implementation of the Race to the Top Fund's grant process highlights our concerns about an approach to education funding that relies too heavily on competition: only fifteen states and the District of Columbia were on the shortlist in the first round to be "eligible" for *possible* funding.<sup>4</sup> These finalist states contain only 37% of the students in the United States eligible for free and reduced lunch. Only 14% of the students in the finalist states are Hispanic compared to 26% in the non-finalist states. Overall, 74% of Hispanic students live outside finalist states. While 53% of Black students in the United States are in the finalist states, losing 47% of the Black students places a huge economic burden on the country. Overall, 42% or 12.5 million of the nation's children would be left behind.<sup>5</sup> As a result of the selection of Tennessee and Delaware as the two winners of the first round, the Race to the Top Fund currently impacts only 2.5% of the students in the United States eligible for free and reduced lunch, 3% of the nation's Black students, and less than 1% of Latino, Native American, and Hmong students.<sup>6</sup>

The limited reach of the Race to the Top Fund and other market-based frames for federal education funding jeopardizes achievement of the commendable goal for the United States to become a global leader in post-secondary education attainment by 2020. By most estimates, the United States will need at least 16 million more graduates a year than our current rate to achieve this goal<sup>7</sup>. This requires a dramatic increase in the percentage of Brown, Black, and Native people – documented and undocumented – achieving post-secondary credentials. If states with large communities of color such as California, Louisiana, Mississippi, and Texas are left behind in any competitive grant process, significant numbers of Black and Brown children who are needed to meet that 2020 benchmark will also be left behind.

The Race to the Top Fund and similar strategies for awarding federal education funding will ultimately leave states competing with states, parents competing with parents, and students competing with other students. Moreover, even states that do not choose to compete for federal incentive funds should have an obligation to provide a standard of education consistent with protecting their children's civil rights. The civil right to a high-quality education is connected to individuals, not the states, and federal policy should be framed accordingly. Good federal policy should mitigate political inequities that serve as barriers to delivering the ultimate change that is so plainly desired and needed. By emphasizing competitive incentives in this economic climate, the majority of low-income and minority students will be left behind and, as a result, the United States will be left behind as a global leader.

We recognize that federal incentives are an important part of motivating states to action. We therefore advocate the use of conditional incentives – incentives that are available to all states that meet whatever equitable and fair conditions are established – rather than competitive incentives, which only provide resources to the few. In addition, the *Common Resource Opportunity Standards*, described above, should factor into the evaluation of all

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<sup>4</sup>U.S. Department of Education, Press Release, March 4, 2010.

<sup>5</sup>U.S. Department of Education, National Center for Education Statistics, Common Core of Data.

<sup>6</sup>*Id.*

<sup>7</sup>Lumina Foundation, Strategic Plan, 2009.

federal educational funding applications and regulatory activities. To the extent that competitive grants will be utilized, states should gain additional points for progress toward resource equity and lose points for providing an inadequate approach to closing opportunity gaps. The strength of states' equity plans should be considered as the U.S. Department of Education (DOE) determines how to allocate limited resources for aid and technical assistance.

## **2. UTILIZATION OF SYSTEMATICALLY PROVEN AND EFFECTIVE EDUCATIONAL METHODS**

For far too long, communities of color have been testing grounds for unproven methods of educational change while all levels of government have resisted the tough decisions required to expand access to effective educational methods. The federal government currently requires school districts to use evidence-based approaches to receive federal funds in DOE's Investing in Innovation grant process. So, too, in all reforms impacting low-income and high-minority communities, federal and state governments should meet the same evidence-based requirement as they prescribe specific approaches to school reform and distribute billions of dollars to implement them.

Rather than addressing inequitable access to research-proven methodologies like high-quality early childhood education and a stable supply of experienced, highly effective teachers, recent education reform proposals have favored "stop gap" quick fixes that may look new on the surface but offer no real long-term strategy for effective systemic change. The absence of these "stop gap" programs in affluent communities speaks to the marginal nature of this approach. We therefore urge an end to the federal push to encourage states to adopt federally prescribed methodologies that have little or no evidentiary support – for primary implementation only in low-income and high-minority communities. For this reason, we propose the following recommendations for federal action to ensure access to systematically proven and effective methods:

### **Recommendation 2A: Promote and Support Universal, High-Quality Early Childhood Education.**

Data on the benefits of high-quality early childhood education are overwhelming, and yet millions of students across the country do not have this opportunity. The federal government must ensure that all students have high-quality early childhood education that ensures literacy by the third grade. When we miss this benchmark, Black and Brown students, and boys in particular, begin the track from the schoolhouse to the penal system – with very few opportunities for course correction. The highly successful reforms in New Jersey prompted by the *Abbott v. Burke* litigation illustrate how high-quality programs can be designed and implemented to produce extraordinary outcome changes in a relatively short period of time. The federal government should create an early childhood education quality index, like the one used in New Jersey, for monitoring program quality, and provide incentives and funding for improving access to high-quality preschool based on that index.

### **Recommendation 2B: Promote and Support Universal Access to Highly Effective Teachers.**

Research indicates that teacher effectiveness is the most important factor impacting educational attainment. Yet, students in low-income and predominately minority schools are far less likely to have access to well-prepared and highly effective teachers. In many communities, our students experience a revolving door of untrained and under-supported novice teachers who cannot create or sustain a high-quality educational program.

The federal government must promote and support the creation of a stable supply of expert, experienced educators for all communities. This will require, first, service scholarships that underwrite preparation for teachers who commit to teach in high-need fields and locations. Second, we must expand effective teacher education and professional development programs that prepare individuals to teach diverse students. Examples of the types of effective programs that we support include teacher residency models, preparation programs in HCBUs and other minority-serving institutions, and “grow your own” programs that follow Chicago’s example and prepare a strong pipeline of teachers and leaders of color who are committed to local communities. Third, there must be incentives to recruit and retain highly effective teachers in high-need areas, including: more equal and adequate wages and working conditions, supportive leadership, high-quality curriculum materials, job-embedded professional development, and regular access to expert coaching and mentoring.

Finally, the federal government must build upon its recently announced intention to ensure that states and school districts do not use test data as the sole or primary measure of teacher effectiveness. Rather, effectiveness should be defined by teachers’ experience, knowledge, skills, and classroom performance, as well as their individual contributions to student learning and their joint efforts to improve learning within the school. Any measure of teacher effectiveness must account for the degree of difficulty of the teaching environment so that high-quality teachers will not be deterred from working in high-need schools. Teacher effectiveness measures should also incorporate classroom management, including consideration of whether teachers keep students in the classroom, help them progress from grade to grade, and eventually lead them towards graduation from high school. In his recent NAACP address, Secretary Duncan recognized the importance of teacher “evaluation systems that use multiple measures,” and committed the Administration to supporting the development of “fair ways to identify our best teachers,” using not only test scores but also indicators such as “classroom observation,” “peer evaluation,” “attendance,” and “classroom work.”<sup>8</sup>

**Recommendation 2C: Institutionalize High-Quality Standards, Curricula, Assessments, and Accountability Strategies to Prepare Students to Meaningfully Participate in Our Democracy.**

The practice of tracking students by perceived ability is a major civil rights obstacle to reaching President Obama’s benchmark for the United States to become a global leader in post-secondary education attainment by 2020. Ideally, we must provide opportunities for all students to prepare for college and careers without creating systems that lead to racially and regionally identifiable tracks, which offer unequal access to high-quality curriculum programs and resources. As a central goal of the ESEA, the federal government must ensure that standards, curricula, assessments, and accountability strategies are aligned to equip, measure, and address the progress of all students towards meaningful participation in our democracy.

For this reason, we applaud the Administration’s *Blueprint* for proposing that student assessments better measure higher-order thinking and performance skills. In addition, any student or school accountability measures mandated by the ESEA should include the use of multiple measures of learning to accurately measure student growth and progress.

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<sup>8</sup> Secretary Arne Duncan, Equity and Education Reform: Remarks at the Annual Meeting of the National Association for the Advancement of Colored People, Kansas City, Missouri, July 14, 2010.

Additional challenges are created by the proposed elimination of targeted funding for a significant number of historically successful programs directly supportive of high outcomes for Black and Brown students in high school and access to college, such as the TRIO programs. We propose expansion, rather than elimination, of these programs, which have proven to be pipelines to opportunity for many students of color.

**Recommendation 2D: Promote and Support the Transformation of Low-Performing Schools into Community Opportunity Education Networks.**

The Administration's *Blueprint* has rightfully highlighted the need to turn around low-performing schools in high-poverty and predominantly minority communities. In our view, the best approach to school turnaround is to reinvent low-performing schools as community schools, offering high-quality programs, strong instruction, and wraparound services. These community-centered schools operate best within *Community Opportunity Education Networks*, which leverage local resources to produce sustainable high-quality learning outcomes for students and parents alike.

We know that good communities create the foundation for great schools. Public schools, as the only mandatory community institutions, can serve as brokers for success, connecting students and parents with supports and resources. In transforming public schools into the hubs of their communities, teachers and principals should play lead roles, supported by mentors, counselors, and health providers.

We applaud the Administration's proposals for Promise Neighborhoods because they have the potential to create *Community Opportunity Education Networks*. We encourage the Administration and Congress to significantly increase the number of target Promise Neighborhoods and augment programs that have been effective in high-need communities, such as career/technical academies and Upward Bound. We also encourage the use of other community school models, such as the one pioneered by the Harlem Children's Zone and those proposed by the Annenberg Institute for School Reform and the Broader, Bolder Approach to Education campaign.<sup>9</sup>

**Recommendation 2E: Employ School Closure Only as a Last Resort and with Appropriate Safeguards.**

Because public schools are critical community institutions especially in urban and rural areas, they should be closed only as a measure of last resort. And where a school district deems school closure necessary *solely* for budgetary or population reasons, the burdens cannot be allowed to fall disproportionately on our most vulnerable communities. We must ensure safeguards are in place to prevent the inequitable distribution of school closings in low-income and high-minority communities.

While we do not rule out school closure as an option for turning around a persistently low-performing school, we fear that the Administration's *Blueprint* places too much emphasis on school closure, as well as the reconstitution of school staff, in its proposed turnaround models. Efforts to close schools and reconstitute staff in urban and rural communities over the last decade have not been a panacea – a fact that school districts that have tried these approaches have come to recognize. Research has found that widespread use of these strategies

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<sup>9</sup>For more information on these innovative strategies, see [www.boldapproach.org](http://www.boldapproach.org) and [www.annenberginstitute.org](http://www.annenberginstitute.org).

has increased disruption but has not improved achievement for the students in these communities.<sup>10</sup> And in some communities, the new schools created do not admit or retain the most educationally needy students.

If solving the educational challenges in these communities was as simple as “fire and rehire” or “close and restart,” the problem would have been solved many years ago, as both teacher and school leader departures and school closures already occur at a much higher rate in low-income and high-minority communities. Simply requiring dramatic changes to governance and staffing will not address those needs. Low-performing schools will not improve unless we also change the resources, conditions, and approaches to teaching and learning within the schools or their replacements. Moreover, as communities in New York and Kansas City have indicated through campaigns protesting the closure of their schools, schools are more than buildings; they are social institutions whose closure could threaten the organized provision of necessary health and social services to their communities.

For these reasons, we urge, first, that no turnaround model should be implemented without ensuring a process for input from, and collaboration with, parents, the community, and teachers. After hearing from our organizations about the importance of meaningful parent and community involvement, Secretary Duncan recently acknowledged that it is “really common sense” that “the community must be at the table when decisions are made about how to improve struggling schools.” And he announced that the Administration “will revise [its] ESEA reauthorization proposal to require parent and community input,” including “notification, outreach, public input, and honest, open discussion about the right [turnaround] option for each community.”<sup>11</sup>

Second, before a school district adopts any turnaround model that results in school closure, it should be required to employ a proven, effective community-based turnaround model with sufficient time and support for that model to bear fruit under normal implementation conditions. Third, no turnaround model should be adopted without accounting for community, health, and social services that have been or should have been provided at the school but may not be available to families elsewhere in the community. Fourth, school closure should only be implemented after a clear strategy is created for how all students will be relocated and well-served, with assurances that all students will have access to higher-performing schools.

**Recommendation 2F: Employ Charter Schools as Accountable Laboratories of Innovation rather than Systemic Reform Prescriptions.**

We have reservations about the extensive reliance on charter schools in the *Blueprint*'s turnaround strategies. While charters can serve as laboratories for innovation, we are concerned about the overrepresentation of charter schools in low-income and predominantly minority communities. There is no evidence that charter operators are systematically more effective in creating higher student outcomes nationwide. The largest national study found that charters are more likely to underperform than outperform other public schools serving similar

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<sup>10</sup>For example, a report from Stanford Research International and the Chicago Consortium on School Research found that the Renaissance 2010 initiative, which closed a large number of low-performing schools in Chicago, resulted in substantial disruption to families and neighborhoods, but no gains on average in student achievement, which remained low. Renaissance Schools Fund-Supported Schools: Early Outcomes, Challenges, and Opportunities, April 2009.

<sup>11</sup>Secretary Arne Duncan, Equity and Education Reform: Remarks at the Annual Meeting of the National Association for the Advancement of Colored People, Kansas City, Missouri, July 14, 2010.

students.<sup>12</sup> And there is even less evidence that charters accept, consistently serve, and accommodate the needs of the full range of students. Charters enroll 54% fewer English Language Learner (ELL) students, 43% fewer special education students, and 37% fewer free and reduced price lunch students than high-minority public school districts. Thus, while some charter schools can and do work for some students, they are not a universal solution for systemic change for all students, especially those with the highest needs.

To the extent that the federal government continues to encourage states to expand the number of charters and reconstitute existing schools as charters, it is even more critical to ensure that every state has a rigorous accountability system to ensure that all charters are operating at a high level. There must also be safeguards to ensure that charter schools do not promote education-driven gentrification through the disproportionate exclusion of students with the greatest needs. And the federal government must work with states and districts to ensure that charters fulfill the same civil rights obligations that apply to all public schools.

### **3. PUBLIC AND COMMUNITY ENGAGEMENT IN EDUCATION REFORMS**

A new ESEA should seek buy-in from community advocates. We believe that the community's voice is best included in the front-end of the policy formation stage to ensure support in the ultimate implementation phase. Highlighting the importance of community engagement, advocates in communities such as New York and Rhode Island have recently filed lawsuits and protested the closure of schools and termination of teachers partially because these decisions were made without community input. And in New York's case, a state court recently reversed the closure of nineteen schools because of a failure to appropriately engage the public.

Unfortunately, the Administration's *Blueprint* makes only cursory mention of parent and community engagement in local school policy development, apparently eliminating even the relatively weak participation guidelines that have long been part of the ESEA. Recent DOE proposals to increase the portion of funds that states must set aside for parent engagement strategies from 1% to 2% of Title I funding<sup>13</sup> are commendable, but they still lack sufficient scale and supports.

Lack of community engagement also has been our concern with the implementation of the Race to the Top Fund competitive grant process. Forty states and the District of Columbia submitted applications with little public support for – or even public awareness of – the proposals included in those applications. The Administration and members of Congress have highlighted community engagement and transparency as important values. But these values must go beyond statements and actually be incorporated into every aspect of DOE's processes, procedures, and policy proposals. To this end, we offer the following recommendations for federal action to ensure public and community engagement in education reforms:

#### **Recommendation 3A: Institutionalize Clear Benchmarks and Processes for Public Engagement in All Federal, State, and Local Education Policies.**

Consistent with our prior recommendation that schools should serve as hubs of the community, the federal government should provide clear benchmarks for parent and public engagement and should promote community-driven reforms. Overall, the goal of our nation's system of education should be to increase the

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<sup>12</sup>CREDO, Stanford University, Multiple Choice: Charter School Performance in Sixteen States, June 2009, at 25.

<sup>13</sup>Secretary Arne Duncan, Looking in the Mirror: Final Remarks to the Mom Congress, Washington, D.C., May 3, 2010.

capacity of individuals to be engaged in our democratic process. Ultimately, we want all students to be prepared for college, careers, and active civic participation. That capacity-building should begin with meaningful input on public education. Moreover, there is clear evidence that when communities are organized and engaged, their schools are better.

**Recommendation 3B: Institutionalize Parent and Family Engagement in All Decisions Affecting Their Children.**

Parental involvement in a child’s education has proven benefits for the child, the teacher, and the parents themselves. Informed and engaged parents are the best judges of their children’s educational needs. Thus, effective parent engagement strategies must be part of a comprehensive education plan and not simply voluntary or encouraged. Furthermore, parents should be fully informed, not only of their right to ensure that their child is receiving a high-quality education, but also of their responsibilities for creating an enriched learning environment outside the classroom.

The revised ESEA should increase dedicated funding – and place additional emphasis on the requirements in state and local education plans – for providing more effective parent engagement strategies in all schools, and particularly Title I schools. This engagement should include, but should not be limited to, professional development for both parents and teachers regarding instruction, student assessments, parent obligations and supports to help prepare students to be “ready to learn,” support for parent engagement in parent-school conferences, and parent literacy programs. Parents should also receive timely notification regarding students’ rights, including mandates for inter-district transfers, supplemental services, and school processes.

**4. SAFE AND EDUCATIONALLY SOUND LEARNING ENVIRONMENTS**

Students cannot learn, and teachers cannot teach, in learning environments that are not safe and educationally sound. But too many schools rely on only one set of punitive tools – suspension, expulsion, and arrest – to maintain order and safety. The overuse of these exclusionary practices has been shown to harm academic achievement, not only for the students being disciplined, but for the school as a whole. Even our youngest students are now being suspended, expelled, or arrested for what used to be considered youthful misbehavior. Racial disparities in discipline practices are also pervasive: African-American students are nearly three times as likely to be suspended, and Latino students are nearly one-and-a-half times as likely to be suspended, as their white peers. Because over-reliance on exclusionary discipline practices has been shown to increase the likelihood that students will fall behind academically, have future behavior problems, drop out of school, and become involved in the juvenile and criminal justice systems, we propose the following recommendations for federal action to ensure safe and educationally sound learning environments:

**Recommendation 4A: Replace the “Persistently Dangerous Schools” Label with a New “Safe Schools” Metric.**

We applaud the Administration’s *Blueprint* for proposing that information on school climate and the health of students’ learning environments should be incorporated into school accountability measures. But it is critical that these measures are designed well and implemented effectively. At the school level, we urge replacing the ESEA’s ineffective “persistently dangerous schools” label with a “safe and supportive schools” metric, focusing on indicia of positive school conditions that support learning. Criteria should include infrequent use of

exclusionary discipline measures, high pupil and teacher attendance rates, low arrest rates, and survey results showing good rapport and personalization between students and staff. Research has shown that high marks on these indicators are predictive of learning environments that keep students in school until graduation rather than pushing them to drop out of school prematurely.

The shift to a “safe and supportive schools” approach must be coupled with changes to discipline practices at the school level. A school’s failure to perform well under this metric should trigger local and state support to implement evidence-based approaches to improve school climate. States should be required to evaluate every school district to identify high rates of exclusionary discipline and significant disparities in the disciplinary rates of students of color and other ESEA subgroups – just as they already do in the context of the Individuals with Disabilities Education Act. In districts where such disparities occur, states should be required to review, and if necessary, assist schools and communities in the revision of policies and provide technical assistance in evidence-based approaches to improve school discipline.

In addition, the DOE, states, and school districts should work with parents and teachers to identify the “ready to learn” skills that parents and organizations should provide students to assist in fostering a safe and sound learning climate.

#### **Recommendation 4B: Promote and Support Alternatives to Exclusionary Discipline Policies.**

Evidence-based alternatives to school districts’ over-reliance on exclusionary discipline practices do exist and have produced positive results for students of all races. Currently pending before Congress is the Positive Behavior for Safe and Effective Schools Act, H.R. 2597. This proposed legislation would increase federal funding and technical assistance for school climate improvement. H.R. 2597 highlights Positive Behavioral Interventions and Supports (PBIS), a data-driven approach to improving school discipline that is linked to greater academic achievement, significantly fewer disciplinary referrals, increased instructional time, and staff perception of a safer learning environment. Other programs that also have been proven to produce these results should be similarly supported. For these reasons, the text of H.R. 2597 should be incorporated into the revised ESEA. And the ESEA revisions also should explicitly reference programs that support positive behavior and school climate improvement as permissible uses of turnaround funds – just as ED’s Race to the Top guidelines did – in order to encourage districts to use these approaches to improve low-performing schools.

## **5. DIVERSE LEARNING ENVIRONMENTS**

Public schoolchildren are more racially isolated now than they have been at any point in the past four decades. And racially isolated schools serving African-American and Latino students are overwhelmingly high-poverty schools. With all too few exceptions, these racially isolated, high-poverty schools fail to provide students with the skills necessary to participate meaningfully in our democracy and global economy. As President Obama has observed, “segregated schools were and are inferior schools . . . 50 years after *Brown v. Board of Education*. And the inferior education they provided, then and now, helps explain the pervasive achievement gap between today’s black and white students.”<sup>14</sup>

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<sup>14</sup>Senator Barack Obama, A More Perfect Union, Remarks at the Constitution Center, Philadelphia, Pennsylvania, Mar. 18, 2008.

The ESEA reauthorization process must take account of the fact that race and class still matter deeply in the education schoolchildren receive. It must also articulate a substantive plan for improving the educational opportunities for Native students and ELL students. To these ends, we propose the following recommendations for federal action to promote diverse learning environments:

**Recommendation 5A: Promote Inclusive Education Environments and Combat Concentrated Poverty, Racial Isolation, and Culturally Submersive Policies.**

To close achievement gaps and prepare all students to live and work together across race and class lines, the ESEA should expressly require that states and districts take concrete steps to promote inclusive educational environments, decrease the concentration of poverty, and reduce the harms of racial isolation. There should be strong financial incentives and continued technical assistance for states and school districts that further these objectives through student assignment plans, school placement, and other policies, or through initiatives such as magnet schools, school pairing, and diversity-oriented choice programs. In addition, there should be financial consequences for states and school districts that enact policies, including school turnaround strategies, which increase the concentration of poverty or exacerbate the harms of racial isolation. And states and school districts should be prohibited from launching any new school district program or school that would result in the re-concentration of poverty or increased racial isolation to the detriment of student achievement.

The federal government should also require states and school districts to provide substantive opportunities to learn for ELL students through linguistically appropriate and culturally relevant methods and content. In addition, the federal government must support the elimination of “English-only” and other culturally submersive policies that impede all students from having a fair and substantive opportunity to learn.

**Recommendation 5B: Strengthen “Right to Transfer” Provisions.**

The ESEA’s “right-to-transfer” provisions should be retained and strengthened. States should be required to ensure that every low-income child assigned to a school that consistently underperforms on the ESEA’s accountability standards has the guaranteed right to enroll in a high-performing school. If no such school is available within the same school district, the student should have the right to enroll in a high-performing school outside the district that has available seats and, if the school receives federal funds, it must be required to accept the student. The ESEA should also provide transportation, resources, and services to support families who exercise their child’s right to transfer. Additional incentives, coupled with the resources proposed in the DOE’s Magnet School Assistance Program, could aid states in promoting these opportunities.

**6. COMPREHENSIVE AND SUBSTANTIVE ACCOUNTABILITY SYSTEMS TO MAINTAIN EQUITABLE OPPORTUNITIES AND HIGH OUTCOMES**

The federal government must hold state and local agencies accountable for protecting every child’s civil right to have access to a high-quality education. This accountability must be both procedural and substantive. Thus, we applaud the recent announcement by DOE’s Office for Civil Rights (OCR) that it intends to use Title VI of the Civil Rights Act of 1964 to hold states and school districts accountable through compliance reviews. But when American Recovery and Reinvestment Act funds are allocated without requiring equitable disbursement or protection of poor districts, and when other offices within the DOE select states like Ohio – whose supreme court has ruled on four separate occasions that the state’s funding formula is unconstitutional – as a finalist

for discretionary federal funding like the Race to the Top Fund, it sends a clouded message that privileges procedural accountability over substantive accountability. An endorsement of states that do not strive for equitable allocation of funds is an endorsement of such states' lack of desire to do what is proven to deliver education in a manner that is equitable and effective.

We propose the following recommendations for federal action to create a more comprehensive and substantive accountability system to maintain equitable opportunities and high outcomes for all students:

**Recommendation 6A: Ensure Procedural and Substantive Accountability.**

Procedural accountability comes at the expense of substantive accountability when states are rewarded for adopting common standards without being required to actually implement and resource those standards. Effective accountability requires a coordinated approach to challenge states and localities to address input and output disparities that are identifiable by race, ethnicity, socio-economic status, or zip code. Parents, teachers, and faith-based institutions must be equipped with the tools to substantively share in the accountability to provide all students an opportunity to learn.

Providing equitable resources for all schools is a research-based strategy and has been proven effective. For instance, after the New Jersey supreme court's decision in *Abbott v. Burke* requiring statewide funding equity, the state successfully undertook efforts to equitably distribute its resources, ensure preschool education, and invest in higher-quality instruction. Following New Jersey's model, states should be required to take actions that lead to a more equitable distribution of resources. In particular, resources should be targeted to close the opportunity gap in accessing research-proven methodologies like high-quality early childhood education and rigorous curricula aligned with post-secondary standards. As a precondition for any federal award, whether formula or competitive, states should be required to show, at a minimum, that they are meeting their own state constitutional standards for providing students with education services. States like Ohio, whose supreme court has ruled that the state has failed to meet its own constitutional standard for education access, should be required to enter into a consent decree with OCR before receiving federal funds in order to prove that they are making progress toward equitable distribution of resources.

In addition, discussions around reauthorization of the ESEA and the federal education budget priorities should not be substantively separate from the implementation of civil rights protections. All DOE policies and decisions should be vetted through OCR for a racial impact analysis under Title VI.

**Recommendation 6B: Strengthen and Enforce Federal Civil Rights Safeguards.**

We welcome the Administration's new initiative for vigorous enforcement of Title VI, but reforms to this key civil rights statute are also necessary to effectively prohibit discrimination on the basis of race, color, and national origin in programs and activities receiving financial assistance from DOE and other federal agencies.

First, students and parents should be able to challenge in federal court any policies that have an unjustified racially disparate impact upon students of color. Second, all school districts should be required to establish a clearly defined administrative process for notifying parents about their schools' compliance under the ESEA

and Title VI. This process should include designating a school-based point of contact for parents to report any complaints. Parents should also be provided with information about OCR's monitoring and enforcement responsibilities regarding racially segregated classrooms/schools, access to gifted/talented and other special programs, unnecessary clustering of ELL students, and disproportionate application of disciplinary actions against students of color. Third, it is critical to clarify that federal civil rights laws and ESEA accountability provisions apply to all schools, entities receiving federal funding, and entities operating pursuant to the ESEA, without exception. This includes alternative and charter schools.

**Recommendation 6C: Ensure Access to Sound Data for Accountability Purposes.**

Access to sound data is necessary for teachers, parents, and policymakers to ensure that states and districts are held accountable for improving opportunities and the achievement of all students. We applaud the Administration for moving forward in requiring states to establish comprehensive data systems for tracking student performance and in improving the Civil Rights Data Collection. The goal should be to make these federal data collection requirements universal for all schools and school districts. Going further, we urge that states and school districts should be required to uniformly track resources available to all students and districts. While taking steps to protect student privacy, states and school districts should also be required to uniformly collect and report comprehensive discipline data for every school, including charters and alternative schools, disaggregated by race, gender, special education status, ELL status, and socioeconomic status. In addition, states and school districts should be required to track graduation rates on a more rigorous basis, for instance, by tracking students who have dropped out or have been in juvenile detention centers.

## **CONCLUSION**

More than fifty years ago, it took the persistent efforts of parents and students in cities and hamlets across the country to persuade the Supreme Court in *Brown v. Board of Education* to rule that all students should have access to an inclusive, high-quality education. Today, our nation is still struggling to fulfill *Brown*'s promise.

As a community of civil rights organizations, our objective is not to support prescriptions that only have the capacity to change a few schools for a few students. We want a blueprint for a federal commitment to education reform that embraces the entire nation and all of its people.

We therefore call on the Administration and Congress to take four important direct actions:

1. Adopt the recommendations in this letter for current discretionary education spending, budget proposals for FY2011 and subsequent years, and ESEA reauthorization;
2. Convene a Summit on the Opportunity to Learn in fall 2010 where administration and legislative officials can meet with key stakeholders to outline a federal role and blueprint for fulfilling the fundamental civil right of all students, in all states, to a fair and substantive opportunity to learn;

3. Establish a White House Commission on the Opportunity to Learn as a standing interagency and intergovernmental commission tasked with identifying and monitoring the coordination and investments necessary to place the United States on a trajectory to meet the 2020 goal of becoming a global leader in post-secondary education attainment and to provide all students a fair and substantive opportunity to learn; and
4. Convene a panel comprised of leadership of the Department of Justice, the DOE, the National Governors Association, civil rights organizations, and other key stakeholders to recommend steps towards confirming that education is a federal civil right.

Some have articulated a belief that our nation is unable to garner the resources to provide a high-quality education for all students and therefore we should just save those we can. But as civil rights advocates, our objective is not to support prescriptions that only have the capacity to change a few schools for a few students. We invoke the leadership and drive of the candidate and Senator from Illinois who told a nation, “Yes we can.” Securing equal access to high-quality education is the civil rights battle of this generation.

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