



**Statement of Wade Henderson, President and CEO
The Leadership Conference on Civil and Human Rights**

**Hearing on Reauthorization of the
Elementary and Secondary Education Act**

**Committee on Health, Education, Labor and Pensions
United States Senate
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Good morning, Chairman Alexander, Senator Murray and members of the committee: I am Wade Henderson, President and CEO of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations charged with the promotion and protection of the rights of all persons in the United States. I am also the Joseph L. Rauh, Jr. Professor of Public Interest Law at the David A. Clarke School of Law, University of the District of Columbia. In addition, I am a member of the board of the Educational Testing Service and currently serve as vice chair.

Thank you for inviting me here today to testify on the reauthorization of the Elementary and Secondary Education Act (ESEA). We truly hope that the final update of ESEA is a bipartisan bill. The leadership of this committee has tremendous professional experience as educators and education leaders. We look forward to working with you and your staffs as this process moves forward.

The civil and human rights community has always seen education and voter participation as the twin pillars of our democracy. Together, they help to make the promise of equality and opportunity for all a reality in American life. We welcome the opportunity that this important and timely hearing provides to look at the ways that we can improve ESEA and ensure that each and every child, regardless of race, national origin, gender, sexual orientation, disability or ZIP code, receives the best education that this great nation can provide.

Sixty-one years ago in *Brown v. Board of Education*, a unanimous Supreme Court underscored the importance at that time of equal educational opportunity:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in

the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.¹

Since *Brown*, all three branches of our national government have acted affirmatively to promote equal educational opportunity and to eradicate racial and other forms of discrimination in schools.² Significantly, the ESEA was enacted *50 years ago* in 1965 and was a pillar of President Lyndon Johnson's War on Poverty. Congress recognized then – and has for the past five decades – that children living and going to school in poverty, and especially those living in concentrated poverty need more, not fewer, resources than their more advantaged peers.

Education is even more important today, and our children need more of it to succeed in life. As President Obama, Secretary Duncan and most of us recognize, a high school diploma is just not enough to access the jobs of today and tomorrow. Students now need postsecondary education or further training after high school. A reauthorized ESEA must be based on a set of core principles for high standards, equal learning opportunities, honest measurement and effective accountability. These principles are summarized in the attached statement from more than 20 national organizations speaking for millions of children and parents/guardians across the country who want nothing but a fair chance to achieve the American dream. Today, we speak with one voice on behalf of all our children—girls and boys, students of color, students not yet proficient in English, those who have disabilities or are homeless or migrant, those in the criminal or juvenile justice systems, and those living in foster care, living on the streets, or living in the shadows.

We speak with deep concern about the growing income inequality in our nation, particularly as it is reflected and reinforced by grotesque disparities in resources available to high- and low-poverty schools. We cannot ignore the fact that state and local school financing systems have been unfair and inadequate. As the Equity and Excellence Commission Report to the Secretary of Education described, gaps in opportunities and outcomes start long before children enter the schoolhouse door, “But instead of getting deadly serious about remedying that fact—by making sure such students are in high-quality early childhood and pre-K programs, attend schools staffed with teachers and leaders who have the skills and knowledge to help each student reach high standards, get after-school counseling or tutorial assistance or the eyeglasses they need to see the smart board—the current American system exacerbates the problem by giving these children less of everything that makes a difference in education.”³

¹ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

² See, e.g., *Bob Jones University v. United States*, 461 U.S. 574 (1983) (“Over the past quarter of a century, every pronouncement of this Court and myriad Acts of Congress and Executive Orders attest a firm national policy to prohibit racial segregation and discrimination in public education.”)

³ Commission on Equity and Excellence, U.S. Department of Education, *For Each and Every Child—A Strategy for Education Equity and Excellence*, Washington, D.C., 2013, available at <http://www2.ed.gov/about/bdscomm/list/eec/equity-excellence-commission-report.pdf>.

We speak with growing alarm about the persistent low achievement of students with disabilities—across all student subgroups and demographic categories—who will face alarming rates of poverty, unemployment, underemployment, incarceration, and institutionalization if we do not honor our commitments under the IDEA, the ADA, Section 504, and ESEA to provide educational opportunities and services that allow them to reach their full potential.

Finally, Mr. Chairman, we must speak truth to the fact that even as the nation continues to recover from the recession, child poverty has persisted and is actually increasing. As the Southern Education Foundation recently reported, for the first time, the majority of students in the nation’s public schools are growing up in low-income families.⁴ More of our students are students of color, more of them are just beginning to learn English, and many enter school with a significant word deficit.

These demographic realities have vast implications for this committee’s challenge to rewrite ESEA. Title I used to be seen as a way to add time and services for a minority of students, those from poor families needing remedial help with basic skills. But with the exception of dead-end, low-paying jobs, our modern labor market is increasingly inhospitable to those who come with only basic literacy and math skills. Today’s good jobs demand levels of hard and soft skills, knowledge, as well as formal education and training that go far beyond a standard high school diploma. And increasingly, they require competence in the STEM subjects, science, technology, engineering and mathematics—subjects that are not even taught in many schools, and are in woefully short supply in schools with higher concentrations of poverty.

These new data paint a stark portrait of the “new normal” in public schools, on which we base our principles and recommendations. As Steve Suitts, an author of the Southern Education Foundation’s student population studies wrote:

No longer can we consider the problems and needs of low income students simply a matter of fairness... Their success or failure in the public schools will determine the entire body of human capital and educational potential that the nation will possess in the future. Without improving the educational support that the nation provides its low income students—students with the largest needs and usually with the least support—the trends of the last decade will be prologue for a nation not at risk, but a nation in decline....

College and Career Ready Standards

What is needed at the national level, first and foremost, is a relentless focus on preparing all students for college and career. This means requiring states participating in Title I to set and maintain academic standards for all students that are aligned with what they will need to succeed in postsecondary education and careers that will pay a family-supporting wage.

The standards, whether the Common Core or other comparable standards, must be implemented as well and as successfully in both high-poverty and lower-poverty schools. It is no longer sustainable for our nation, or any state, to maintain dual systems of public schools—one for the privileged and another,

⁴ <http://www.southerneducation.org/Our-Strategies/Research-and-Publications/New-Majority-Diverse-Majority-Report-Series/A-New-Majority-2015-Update-Low-Income-Students-Now>

vastly inferior, for communities of color and the poor. States—which under our federal system have primary responsibility under their own constitutions for educating their children—must be required to meet these obligations by ensuring that all students, regardless of ZIP code, English proficiency levels, race, gender or disability, have an equal opportunity to meet the standards. This must include providing early childhood education, particularly for low-income children and those with disabilities. States must also provide updated technology, effective and qualified teachers, curriculum aligned with the standards, and supports and services needed by English learners, pregnant and parenting students, and students with disabilities. Finally, states should ensure that all schools maintain a safe and healthy school climate with inclusionary discipline best practices.

It is not an inappropriate intrusion on state sovereignty for Congress to assert these urgent national interests in equity and excellence and make these demands on states as a condition for receiving federal education dollars.

Funding and Targeting

The federal government must also increase and continue to target resources to disadvantaged and vulnerable populations, including those living in concentrated poverty, those learning English, Native students, homeless students, and those in foster care or the juvenile or criminal justice systems. The federal government should fully fund both Title I and IDEA, and it should also provide incentives for states to address inequities in their systems of school finance. It should also retain, improve, and fund School Improvement Grants (SIG). For example, these grants' allowable uses, where an analysis of school needs support these uses, should include creating magnet schools, inter-district transfers, community schools, and expanded learning time models. We acknowledge the prerogative of local authorities to open and close facilities and to determine student assignments, provided they do not run afoul of federal non-discrimination obligations. School closings, however, in and of themselves do not improve students' instruction and learning. As such, they should not be permissible under SIG, unless in connection with a plan to reassign students to schools that will provide demonstrably better instruction and learning.

Assessments

Federal investments are unlikely to result in meaningful gains unless they are accompanied by unequivocal demands for higher achievement, higher graduation rates, and substantial closing of achievement gaps. Similarly, states must ensure that their school districts and schools are able to, and in fact are, meeting academic and high school graduation standards. This is why it is so important that ESEA continue to include strong requirements for assessments and accountability. In other words, public agencies, officials and employees are all accountable for our children's and nation's future. Accountability is a core civil rights principle, and it is indispensable to advancing our collective interest in providing equal opportunity, reducing poverty, and maintaining our country's competitiveness and national security.

The Leadership Conference and more than 20 national organizations have called on Congress to maintain and improve strong accountability requirements in ESEA. Our approach to accountability is straightforward and sensible.

First, high-quality, statewide annual **assessments** are needed. It is imperative that parents, teachers, school leaders, public officials, and the public have objective and unbiased information on how their students are performing. ESEA must continue to require *annual, statewide assessments* for all students (in grades 3-8 and at least once in high school) that are aligned with, and measure each student's progress toward meeting, the state's college and career-ready standards.

Local assessments should only be used to supplement the state assessments, but not for ESEA accountability purposes. They cannot be a credible substitute for statewide assessments, because there is no way to ensure comparability of local assessments across a state. Civil rights organizations are also concerned about incentives for lowering standards on local assessments and the added assessment burden on classroom time.

To ensure fairness, the assessments must meet prevailing, widely accepted professional psychometric standards and be valid and reliable measures of student progress. They must meet other requirements now in Title I, including the requirement to disaggregate and report results.

States must continue to provide appropriate accommodations for English learners, who should be exempt only for their first year attending school in the United States. ELLs should also be assessed in the language and form most likely to yield accurate information on their knowledge and skills.

In addition, states must provide appropriate accommodations for students with disabilities. States also must limit alternate assessments based on alternate achievement standards only to students with the most significant cognitive disabilities, up to 1 percent of all students; terminate assessments based on modified achievement standards; and prohibit the use of Individualized Education Programs (IEPs) to measure academic achievement under ESEA.

We believe that 90 percent of students with disabilities should be taking the general assessment with or without accommodations as appropriate. This is supported by state-reported data showing that most students receiving special education services have reading or math disorders, speech impairments, physical impairments, attention issues, or emotional challenges; only a small number have the type of intellectual disabilities that significantly impact their cognition and ability to learn at pace with their peers. When students take the general assessment, are taught to state standards, and provided the supports and services they are *entitled to under the law* and need to graduate with a regular diploma, a world of economic opportunity opens for them.

You will certainly hear from those who will argue that it is somehow acceptable to set much lower expectations for students with disabilities, perhaps in some cases because schools have not been provided with the staff support necessary to provide the proper services and accommodations. It is not acceptable. In fact, it is both unlawful and unconscionable. There is absolutely *no reason* to allow schools unchecked discretion to assign students with disabilities to the alternate assessment on alternate achievement standards because in most states, this automatically takes students out of the general curriculum and off

track for a regular diploma. There is also evidence that an alternate assessment may lead to increased segregation for students with disabilities.

Finally, we all recognize that many high-poverty schools do not have the technology in place to properly administer computer-based assessments. We believe that, during a transition period, alternatives to computer-based assessment should be provided to students in schools that have not yet provided them with sufficient access to, and experience with, the required technology.

Accountability

Next, effective **statewide accountability systems** are needed. State accountability systems must expect and support all students to make enough progress every year so that they are on track to graduate from high school ready for college and career. States must set annual district and school targets for grade-level achievement, high school graduation, and closing achievement gaps for all students, including accelerated progress for subgroups (each major racial and ethnic group, students with disabilities, English language learners, and students from low-income families), and evaluate schools and districts on how well they meet the targets.

States and school districts must diagnose the causes of low achievement or graduation rates and identify barriers to improvement. They must then employ effective remedies to eliminate these causes and barriers and improve instruction, learning, and school climate (including, e.g., decreases in bullying and harassment, use of exclusionary discipline practices, use of police in schools, and student referrals to law enforcement). Remedies for students enrolled should be implemented in any school where the school as a whole, or any subgroup of students, have not met the annual achievement and graduation targets or where achievement gaps persist. The remedies must be effective both in improving subgroup achievement and high school graduation rates as well as in closing achievement gaps.

Third, states and school districts need to improve **data collection and reporting**. Public disclosure, robust data collection and reporting systems, and transparency are all important civil rights values. States and LEAs must improve data collection and reporting to parents and the public on student achievement and gap-closing, course completion, graduation rates, school climate indicators (including decreases in use of exclusionary discipline practices, use of police in schools, and student referrals to law enforcement), opportunity measures (including pre-K and technology), and per-pupil expenditures. Data must be disaggregated by categories in Sec. 1111(b)(3)(C)(xiii) of Title I, and cross-tabulated by gender. Data should also be further disaggregated by English proficiency levels as well as by Asian national origin subgroups.

Members of Congress in both houses and both parties are being bombarded with messages from those who do not share our unwavering insistence that this body – and every legislature and school board across the country – do every last thing possible to level the playing field and provide the opportunities to learn and excel that all students, all families, and all communities deserve – and that our nation cannot thrive without.

You will hear countless naysayers claim that the assessment and accountability provisions of ESEA, enacted first in 1994 and later strengthened with passage of No Child Left Behind in 2001, have been nothing but a failure and a burden on schools. This is simply not true. Since the imposition of the federal requirement for annual tests, full public reporting, and serious accountability for the results of every group of children, achievement among black, Latino, and low-income students has improved. On the longest standing national examination — the NAEP Long Term Trends Exam — these groups have improved faster than at any time since 1980. Indeed, African-American and Latino nine-year olds now perform as well in math as their 13-year old counterparts did in 1973.

Taking a closer look at the last 15 years, our most vulnerable students have shown progress on a range of important measures. For example:

- Between 2000 and 2013, the percentage of the nation's low-income 4th graders reaching proficient or advanced levels in math nearly quadrupled, and the percentage without even basic math skills fell by more than half.
- Gaps in reading achievement separating African-American 8th graders from their White peers narrowed by nearly a quarter between 1998 and 2013.
- The percentage of students with learning disabilities graduating with a regular high school diploma grew from 57 percent in 2002 to 68 percent in 2011.
- The percentage of Latino students enrolling in college immediately after high school has increased from 49 percent in 2000 to 69 percent in 2012.

These numbers represent real differences in the life trajectories of young people. But these gains are not good enough. We still have more work to do to ensure that all young people graduate high school ready for college and the workplace. We must remain mindful that:

- Nearly half of African-American and Latino 4th graders struggle with basic reading skills.
- Just 20 percent of low-income eighth graders score proficient or above in math.
- One in four Latino ninth graders won't graduate four years later. For African-American and Native students, the figure's closer to one in three.

These priorities related to assessment and accountability are not the only priorities of The Leadership Conference. You will be hearing from us in the weeks ahead on other issues that are also critically important. In the meantime, I want to highlight several urgent needs, all related to whether efforts to improve student outcomes will succeed or flounder.

First, no child should be afraid to go to school or be made to feel ashamed of who he is or what she believes. Every student deserves to attend school in a safe, inclusive environment free from bullying, harassment and discrimination, all of which contribute to high rates of absenteeism, dropout, depression and other adverse health consequences, and academic underachievement. Current federal education law lacks an express focus on issues of bullying and harassment, and the protections against discrimination are incomplete. We urge the committee to include these measures in the ESEA bill:

- The Safe Schools Improvement Act would require school districts to adopt codes of conduct specifically prohibiting bullying and harassment, including on the basis of race, color, national origin, sex, disability, sexual orientation, gender identity, and religion.⁵
- The Student Non-Discrimination Act would prohibit public schools from discriminating against a student on the basis of sexual orientation or gender identity, expanding the list of currently protected classes.

Second, Congress should fully fund Title I. Many of the problems Congress is trying to address—including massive resistance to change—might have been averted if Congress had actually faithfully implemented the law that it passed, which was supposed to raise funding Title I from \$13.5 billion in 2002 to \$25 billion in 2007. While Title I was fully funded in 2001, with appropriations at 100 percent of authorized levels, by 2007, it was down to 51 percent of authorized levels. The Title I appropriation reached only \$14.4 billion in 2015 and the chairman’s proposal would cap it at \$14.9 billion through 2021. This stagnation in Title I funding occurred while the percentage of poor children in public schools skyrocketed (since 2000 from 38 percent to 51 percent, according to the Southern Education Foundation report).

I would like to conclude my testimony by commenting briefly on Senator Alexander’s proposals regarding assessment and accountability and on Senator Murray’s principles for reauthorization.

We are encouraged that several provisions in Senator Alexander’s bill touch on some of the civil rights’ groups core principles, including: a focus on college-readiness, the requirement for states to set standards, administer annual assessments (in Option 2) and disaggregate results, and statewide accountability systems based on state standards. Under the bill, states would be required to identify and differentiate among schools based on student achievement, subgroup performance, and achievement gaps. Graduation rates – 4-year adjusted cohort rate and extended-year adjusted rate – would also be included. States and school districts would be required to assist Title I schools identified as needing academic achievement. The proposal also preserves the 95 percent assessment participation requirement for all student subgroups. The report cards would also include actual per pupil expenditures.

Of course, the devil is in the details, and the bill falls short with respect to our principles in several ways, including but not limited to:

First, as a general matter, the bill bends over backwards to accommodate the interests of state and local government entities that have both failed our children and avoided any real accountability for their failures. Rather than use the power of the federal purse and the Equal Protection Clause to leverage better policies and performance from the states in educating our most vulnerable children, the bill would allow states to water down standards; to maintain grossly inequitable and inadequate school financing schemes; to repurpose Title I dollars to serve otherwise ineligible students; and to settle for a “nice try” rather than

⁵ <http://www.hrc.org/resources/entry/safe-schools-improvement-act>

real results in closing gaps in achievement and high school graduation rates. Here are just a few examples:

- The bill would eliminate the requirement for achievement, gap-closing and graduation rate targets for subgroups of disadvantaged students and remedies when the targets are not met.
- The bill subverts the purpose of college and career ready standards by, for example:
 - Using instead the term “college or career ready” which could easily result in low-income students and students of color being tracked into less rigorous vocational programs rather than providing them the skills needed to succeed in a rigorous career training program.
 - Requiring that the standards align only with the entrance requirements of *one* institution of higher education in the states, rather than a more meaningful standard set by a public university system governing board.
- The bill would allow states—under political pressure from special interests—to depart from statewide assessments, or to dilute the results of those assessments, by using local assessments for state accountability purposes. The bill even authorizes funds in federal program intended to improve state assessments to be diverted to develop local assessments.
- The bill’s options would also allow states—under political pressure from special interests—to depart from assessing students annually and to revert to a weaker system of “grade span” assessment and accountability.
- The bill would codify the current regulatory option for an alternate assessment for students with the most severe cognitive disabilities, but fails to limit its use to 1 percent or fewer students, thereby creating perverse incentives for schools to funnel more challenging students into low-level academic tracks.
- The bill weakens the requirement that school districts ensure that low-income and minority students are not taught at higher rates than other students by inexperienced or unqualified teachers, and it eliminates the parallel requirement at the state level.
- The bill would eliminate parents’ right to transfer their children from low-performing schools to successful schools and makes it a local option.
- The bill’s authorization levels are completely inadequate. Title I’s authorization would be fixed at \$14.9 billion for the life of the bill – a sum that is \$10 billion lower than the \$25 billion authorized for 2007, the most recent year specified in the law.
- The bill eliminates “maintenance of effort.”
- The bill’s “portability” provisions would dilute targeting of federal funds to the schools with the highest concentrations of poor students and thereby compromise the ability of these schools to improve.
- The bill further hampers school improvement efforts by eliminating rather than improving the School Improvement Grant (SIG) program, which has directed \$500 million per year to the lowest-performing schools—usually the bottom 5 percent—for comprehensive whole-school reform, including increased learning time and school restructuring.
- The bill’s block-granting of Title IV and the elimination of vital programs—such as the 21st Century Community Learning Centers, Promise Neighborhoods, the AP program, and school counselors—will harm children. When programs are both consolidated and cut, and they each

have legitimate purposes, the winners and losers will be determined by who has more political influence, not what programs are best for underserved children.

- Finally, there is no proposal for a dedicated funding stream for early childhood education programs, which are urgently needed for young children with disabilities and those living in poverty.

Second, at a time when we need more leadership than ever from the national government, and when taxpayers are demanding more transparency and results from government, the bill would allow federal dollars to keep flowing to states with virtually no meaningful accountability for the spending nor effective oversight from the Secretary of Education. For example:

- The bill sets a far lower standard of review for federal approval of state plans than for state approval of school district plans. Rather than place the burden on states to convincingly explain how their plans would work, the bill would require the secretary to provide “research” demonstrating the plan would not work, along with a hearing, before rejecting the plan.
- By requiring approval within 45 days, the bill foolishly limits the capacity of the secretary and the Department of Education to conduct a robust peer review of state plans and to have a process that ensures that each state’s plan meets the statute’s requirements. Scrutiny of assessments, evidence of standards, reporting on “supplement not supplant” provisions, etc., are all weakened under this bill.

With respect to Senator Murray’s proposals, we applaud the commitment to early childhood education, and to making sure that when states and districts accept federal money, they use it to produce academic gains for students.

The Leadership Conference and our member organizations will provide additional comments and recommendations on the legislative proposals in the coming weeks. We encourage the leadership and members of the committee to continue to work across the aisle to improve our public schools and to reauthorize ESEA. We look forward to further discussion with you and members of the committee.

Thank you for your consideration.

Attachments:

- Civil Rights Statement of Principles
- Achievement and Achievement Trends (Education Trust, 2015)