December 4, 2015

Re: ACLU Views on S. 1177, the “Every Student Succeeds Act”

Dear Senator:

On behalf of the American Civil Liberties Union (ACLU), we write to express both our appreciation and concerns with the “Every Student Succeeds Act” (S. 1177). This legislation, which is expected to receive a floor vote as early as Monday, December 7, would allow for the implementation of inclusionary school discipline practices, support disaggregated data collection in measuring student achievement, and promote community-based plans for reducing youth incarceration. However, by seriously limiting the federal role, the bill continues to fall short of implementing meaningful accountability mechanisms and undermines the Elementary and Secondary Education Act’s (ESEA) legacy as an important civil rights law. This letter will detail those elements of the bill that we support, as well as those that raise significant concerns.


First, the bill recognizes the negative impact of school “push-outs” through harsh school discipline practices—which disproportionately affect low-income students, students with disabilities, and students of color—and provides opportunities to foster positive school climate. For example, state and local educational agencies may incorporate school climate as one of the factors for measuring accountability, and schools are permitted to implement and train teachers in inclusionary disciplinary practices, such as schoolwide positive behavioral interventions and supports (PBIS), which have demonstrated effectiveness in combating discipline problems while supporting a safe and productive learning environment. Second, the bill maintains provisions requiring states to report data on student performance that is disaggregated by gender, race/ethnicity, disability status, English proficiency, economic status, and migrant status, and can be cross-tabulated. The bill also requires states to set goals for high school graduation rates, differentiated by subgroup of students. These provisions will help identify better interventions for students who fall into more than one subgroup and can contribute to and inform student experiences and outcomes.

Finally, the bill promotes funding for Youth PROMISE plans—community-based and evidence-based plans for improving student academic achievement and reducing juvenile incarcerations. Youth PROMISE plans can include after-school, mentoring, job training, and mental health treatment—all of which are more
effective at cutting recidivism, lowering crime rates, decreasing delinquency, and yielding
greater financial rates than traditional punitive methods. The inclusion of this provision in the
bill represents an important commitment toward keeping at-risk youth in schools.

II. **S. 1177 Causes Harm by the Curtailing of the Federal Role Necessary for
Enforcing Civil Rights, Addressing Excessive Disciplinary Practices, and
Ensuring Meaningful Accountability.**

We are deeply troubled by provisions of S. 1177 that diminish important safeguards of federal
oversight and accountability. As enacted in 1965, the ESEA embodied a commitment by the
federal government to the quality education of all children, particularly children who faced
disadvantages. S. 1177 includes many provisions that could aid students most in need, as
outlined above. Yet it does not provide clear mechanisms to hold states accountable for adopting
and carrying through on plans to improve the educational outcomes of these students. For
example, states and districts with persistent school discipline disparities are not required to
remedy those disparities.

This lack of enforcement is especially troubling, as national data already show that excessive
disciplinary measures impact African American students, Latino students, and students with
disabilities disproportionately and are particularly harmful for African American and Latino
girls. Similarly, though states must identify low-performing schools under S. 1177, the bill does
not require that states act to close achievement gaps and turn around persistently
underperforming schools.

As it was when the ESEA first became law, meaningful federal oversight is critical to ensure
that students in all states and in all districts receive the quality education they need to
succeed. The federal government must be able to step in and protect students when state policies
fail to address education inequities or discriminatory discipline policies and threaten students’
civil rights. Too often, it is our most vulnerable children—children of color, children with
disabilities, children facing economic need and homelessness, children in foster care, and
English language learners—whose educational opportunities are compromised when states and
localities are not held accountable. To the extent that S. 1177 gives greater discretion to states,
states must also take greater responsibility for improving schools, reducing exclusionary
discipline, and closing opportunity gaps.

III. **S. 1177 Contains Provisions Encouraging States to Strive for Resource
Equity, But Falls Short of Including Remedies for Addressing Inequities.**

Many students are forced to attend failing schools simply because they live in poor areas with
underfunded schools and school districts, disproportionately impacting the educational
opportunities of students of color. While S. 1177 requires states and schools targeted for
improvement to identify resource inequities and to report per-pupil expenditures, the bill neither
defines what constitutes an inequity nor requires mechanisms for addressing such disparities.
Similarly, though S. 1177 prioritizes grant funding for states that “improve equitable access to
teachers for low-income and minority students,” the bill does not require states to address any
access gaps between schools and districts. Strengthening resource equity between and within

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1 Kimberle Williams Crenshaw, Priscilla Ocen and Jyoti Nanda, *Black Girls Matter: Pushed Out, Over policed and
Under protected*, African American Policy Forum and the Center for Intersectionality and Social Policy Studies at
school districts is necessary for preventing racial re-segregation in our schools and for ensuring that all children have an equal opportunity to receive a high-quality education.

IV. **S. 1177 Fails to Explicitly Address Discrimination Against LGBT Students.**

Given the significant impact of discrimination against students in public elementary and secondary schools across the country on the basis of actual or perceived sexual orientation and gender identity\(^2\), it is disappointing that S. 1177 fails to provide LGBT students with clear and explicit protections. While federal laws currently – and rightly – protect students on the basis of race, color, sex, disability, and national origin, no federal statute expressly protects students on the basis of sexual orientation or gender identity. Unsurprisingly, this lack of clarity makes LGBT students uniquely vulnerable to discriminatory treatment, including by teachers and school administrators. This legislation should have addressed the unacceptable lack of explicit protections for LGBT students in federal law, however, it failed to do so.

V. **Conclusion**

Congress must remain true to the spirit of the ESEA as a civil rights law, and not abandon its responsibility to ensure that federal dollars given to states and school districts are spent in a way that gives all students equal opportunity to learn. While we understand that there is a need to update the current education system, the ACLU cannot fully support legislation that diminishes federal oversight and accountability and continues to place our country’s most vulnerable students at risk. **We urge Senators who choose to support S. 1177 to commit themselves publicly to repealing, or ameliorating the effects of, the provisions curtailing the federal role necessary for protecting students of color and students with disabilities, as well as the lack of explicit provisions protecting LGBT students.**

In light of the federal government’s decreased capacity under S. 1177, the ACLU calls on all federal, state, and local officials to uphold their roles in ensuring that all students have equal opportunity to a high-quality, safe, and supportive learning environment. The ACLU urges the Administration to issue necessary regulations and guidance on S. 1177 promptly.

If you have any questions, please contact Jennifer Bellamy, Legislative Counsel, at jbellamy@aclu.org or (202) 715-0828.

Sincerely,

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